Northwest Territories Legislative Assembly

10th Assembly

Special Committee on Rules, Procedures and Privileges

Third Report

Ted Richard
Chairman

October 14, 1986

THE HONOURABLE DONALD M. STEWART
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Sir,

The Special Committee on Rules, Procedures and Privilege has the honour to present its third report and commends it to the House.

Respectfully submitted,

Ted Richard, M.L.A.
Chairman, Special
Committee on Rules,
Procedures and Privilege

INTRODUCTION

The Special Committee on Rules, Procedure and Privileges was formed at the request of the 6th Session of the 10th Assembly. Its purpose was to examine the powers, rules, procedures, practices and organization of the Legislation Assembly and recommend changes where appropriate.

To that end the committee has examined the existing rules, has accepted the referrals of Caucus, of the Speaker, of the Clerk, and of individual members. The many changes that were suggested by that review process were brought to the attention of the House with the publication of the first Report which was tabled in the Assembly at the 7th Session, March of 1986, and adopted with amendments in June of 1986.

The Committee travelled to other jurisdictions to examine their rules and procedures and the manner in which they conduct business. Some specific concerns, such as the use of television in other Assemblies, were studied. The resulting recommendations from that tour were presented to the Assembly in the Second Report of the Committee, tabled and adopted with amendments in June 1986. In the preparation of the third report the Committee reviewed: five items referred by Caucus; procedural concerns identified by the Clerk; the question of Confidence; the possible use of television within the House; the question of Conflict of Interest; the question of a review of Agencies, Boards, and Commissions; the question of Privilege; the Motion of Concurrence from Committee of the Whole; and the matter of a Press Gallery. These examinations are nearly complete. the only matter left for further review is that of "Confidence". The Committe is of the view, however, that there is a need for an ongoing committee to review the rules and procedures of the Assembly, and to make any recommendations requested by the Assembly on matters of privilege. With that in mind the Committee has made a recommendation that there be a Standing Committee of the Legislative Assembly on Rules, Procedures and Privileges.

The Committee wishes to acknowledge the contribution made by so many to this report. The Committee wishes to thank all members of the Legislative Assembly for their comments and input. It especially wants to recognize the invaluable contribution of the Speaker and of the Clerk. It wishes to thank those individuals in other jurisdictions who contributed information both written and oral for the review and use of the Committee and must also thank the staff, particularly Doug Schauerte and Noel Montagano, that assisted in the gathering of information and the collation of the Committee's reports.

CAUCUS REFERRALS

1. That the prayer currently used by the Assembly be reworded, and

2. That the prayer be read in the aboriginal languages and English on a rotational basis.

The Committee was of the opinion that the Speaker should have the authority to amend the prayer or adopt any prayer that he found suitable to the needs and concerns of the House. It was felt however that the prayer should be translated into the official languages and that the Speaker at his discretion could speak the prayer in any of those languages. It was felt that it would be acceptable if the Speaker were to call upon Members of the Assembly or the Clerk to have the prayer spoken in any of the official languages. No change to the existing prayer was proposed.

The Committee, therefore, recommends that rule 19 be amended to read:

19. A prayer shall be read in an official language every day at the meeting of the Assembly before any business is entered upon. The prayer will be read by the Speaker, or the Speaker may from time to time call upon the Clerk or a Member to read the prayer.

3. That an alternative to the use of the word "Order" by the Sergeant-at-Arms when entering the Chamber be recommended.

The Committee felt that the word "Order" is used to bring immediate recognition to the attention and respect due at the time in the proceedings when it is used, such as when the Mace enters or leaves the House. It was the opinion of the Committee that a Sergeant-at-Arms should be free to use any equivalent word from the official language of his choice. No specific words were identified nor was a change to the English word "Order" suggested.

4. That there be a review of the dress and name of the Sergeant-at-Arms.

The Committee felt that the style of dress for the Sergeant-at-Arms should be left to the discretion of the Speaker. The Committee could not decide upon an alternate name. It was felt that it was an acceptable title in English and welcomes the suggestions from native members for suitable translations in the other official languages.

5. That information be made available to the Members and the public on the requirements for and significance of the Mace.

The committee was informed that at the direction of the Speaker the Public Affairs Officer has developed an informational history of the Mace.

PROCEDURAL CONCERNS OF THE CLERK

1. Notice on first reading of Bills

The Clerk asked the Committee if the rules for motions should be made to apply for 1st reading of bills. The rule requires that after 48 hours a motion that has been made (i.e. for 1st reading) but which is not proceeded with is to be dropped from the Order Paper. Our practice with 1st reading is to leave the bill on the Order Paper until dealt with, however long that is.

The Committee recommends that:

The Speaker ensure that all Bills are proceeded with in the manner prescribed for motions in rules 37, 38(g) and 48.

2. Deadlines for the introduction of Bills

The Clerk noted that some jurisdictions provide a dealine for introduction of bills towards the end of sessions to ensure that sufficient time is allowed for review and discussion by Members. The Committee noted that rule 37 requires a 48 hour period of notice of introduction of a Bill. That requirement can only be waived under rule 29(1) that requires unanimous consent of the House. It was believed that this provided the protection that Members might need to ensure they have adequate time to examine proposed legislation. No recommendations were made.

3. Committee memberships

The Clerk noted that rule 86 allows for only seven members on standing committees and pointed out that the present committees have ten members. The Committee was of the opinion that no immediate changes should be made but that this rule should be enforced when committees are formed at the start of the 11th Assembly. The Committee also felt that three alternates should be named to each standing committee who can be called upon to sit in when it is known that a committee member can not attend a meeting or function. These alternates, only when participating, should have the right to vote and be entitled to all the usual indemnities etc.

The Committee, therefore, recommends that:

the current rule 86 become 86(a)

and that the following new rule 86(b) be adopted:

86(b) Each standing committee shall have in addition three alternates any one of whom may be called upon to take the place of a member who is absent from any proceeding of the committee. When participating in committee business the alternate shall be entitled to vote on any matter.

4. Committees and the Public

The Clerk indicated that not all committee meetings were open to the public. The Committee felt that this decision should rest with each committee and be included in its terms of reference. No further recommendation is made.

5. That there be a Standing Committee on Rules, Procedures and Privileges.

It is acknowledged that this committee can be of considerable help in the interpretation, clarification and drafting of the rules required for the operation of this Assembly. The Committee members agree that there are sufficient areas of on-going and one-time concern such as matters of privilege, or a serious matter dealing with the rules, to warrant the establishment of a standing committee.

The Committee recommends that:

a) there be a new permanent committee to be named the Standing Committee on Rules, Procedures, and Privileges and

b) that rule 84 be amended to include this committee. It would read:

84. "...to compose the Standing Committees of the Assembly, for the following purposes: On Legislation, On Finance, On Public Accounts, On Rules, Procedures and Privileges..."

The Committee would further recommend that among the terms of reference of the committee should be:

i) that requests for amendments or revisions to rules be referred to the committee by the Speaker, the House or ~~by~~ Caucus.

ii) that matters of privilege and conflict of interest ~~as they arise~~ be referred to the committee for its review and recommendations.

5

iii) that the committee be comprised of ~~seven~~ members, one of whom shall be the government House Leader.

/ his or his designate

CONFIDENCE

As the Committee's terms of reference included an examination of, "the accountability of the Executive Council to the Legislative Assembly", the Committee sought advice on this important matter. Initially this advice was sought from Senator Eugene Forsey, a renowned constitutional expect. In 1984 Senator Forsey and Professor Graham Eglington co-authored a background paper for the federal McGrath Committee which was studying a revision of the rules and procedures of the House of Commons. An examination of this paper indicated that an underlying assumption, the existence of party politics, made the paper of limited value to our committee.

Accordingly, the Committee retained the services of Professor Eglington to provide advice on, "questions of Confidence", in our Legislative Assembly as it currently exists. A copy of Professor Eglington's paper is included with this report as Appendix "A". Members are encouraged to read the report in conjunction with this section of the Committee report.

All members of the Committee were of the view that there is significant value in the advice and observations provided in this paper and that this paper will become an invaluable document for consideration by Members of future Assemblies.

The Special Committee on Rules, Procedures and Privileges had hoped to be able to conclude its business with this report. The matters brought to its attention by Professor Eglington's paper are of such importance that Members have agreed to meet again following further study of the paper. The Committee expects that several important recommendations will result from its extra review of this document.

The Committee is of the view, however, that several matters should come to the attention of the Legislative Assembly at this time. The Committee makes the following recommendations.

1. **The Committee recommends that a rule be added to the Rules of the Assembly to provide for a vote of censure of an individual Minister.**

   The Committee will undertake to write a rule that addresses this concern and present it for consideration of the House in our final report. The Committee has also directed its legal advisor to clearly define censure as opposed to non-confidence before this new rule is drafted.

2. **The Committee recommends that a rule be added to the Rules of the Assembly to provide for a vote of non-confidence in the Executive Council as a whole.**

A writing of this rule will require clear definition of the concept of "collectivity" within the Executive Council.

3. **The Committee recommends that rule 55(1) ~~Legislative Assembly~~ and Executive Council Act be changed to ensure that only Members of this Assembly may be Ministers of the government.**

   Therefore the Committee recommends that line 6 of rule 55(1) be changed as follows:

   delete the word "persons" and add in its place the words, "elected Members of the Legislative Assembly".

Professor Eglington raised several serious concerns about the powers of this Assembly under the NWT Act (Canada). While further review may result in further recommendations the Committee, at this time, makes the following recommendations:

4. **It is ~~recommended~~ that the Executive Council seek advice on the constitutionality and legality of Sections 55-64 ~~entitled~~, Executive Council;** and a report made to this Committee in advance of our next session.

5. **It is recommended that the Legislative Assembly request of the Parliament of Canada that the NWT Act (Canada) be amended to provide ~~this Assembly~~** THE COMMISSIONER **with the power of dissolution.**

6. **It is recommended that the Legislative Assembly request of the Parliament of Canada that the NWT Act (Canada) be amended to provide this Assembly with the power to legislate on matters of Executive government.**

7. **It is recommended that the Legislative Assembly request of the Parliament of Canada that the NWT Act (Canada) be amended to provide this Assembly with the power to legislate for the privileges, immunities, and powers of the Legislative Assembly and its Members.**

8. **It is recommended that the Legislative Assembly request of the Parliament of Canada that the NWT Act (Canada) be amended to adopt the terminology in constitutional matters currently in use in the Acts of this Assembly.**

The Committee recognizes that these are only requests of the Parliament of Canada and that there is nothing than can be done to demand they be adopted. We do however recognize the value of concerted follow-up with the Federal Government and particular with the Minister of Northern Affairs. The Committee, therefore, makes the following recommendation:

9. It is recommended that the Executive Council be directed to follow-up with the Parliament of Canada its efforts to implement the amendments requested by this Assembly resulting from the recommendations made in this 3rd and in the 1st report of the Special Committee on Rules, Procedures and Privileges.

As stated previously the Committee is of the opinion that Professor Eglington's report deserves the full review by the Committee and indeed by all Members of this Assembly. The Committee, therefore, makes the following recommendation:

10. It is recommended that the report, "Matters of Confidence in the Legislative Assembly of the Northwest Territories" be reviewed by the Special Committee on Rules, Procedures and Privileges which in a 4th report will make long term recommendations to this House at the Winter Session, 1987.

TELEVISING THE LEGISLATURE

The Committee did an extensive study of this question and included it as a major portion of its review on the tour of other jurisdictions. The closest parallel was found to be with the Government of Saskatchewan which does televise its proceedings. In 1976 that government examined this question and found for a number of reasons that introduction of television at that time was not viable. This Committee feels that for many similar reasons we are not yet ready for this step. Some of those reasons are:

a. the technological problems created by our geographical vastness

b. the difficulty and costs of language translation

c. the temporary nature of our Assembly building

d. the extremely high costs of installation and operations and maintenance are prohibitive. (almost $2 million in Saskatchewan the first year - $1/2 million each year to operate - our costs could be as high as $5-6 million.

The committee feels, as did the Government of Saskatchewan in 1976, that this is an option that might be examined in the future when conditions may have changed that make the project more feasible.

The Committee was made aware that a facility now exists that makes recorded tapes of proceedings available. These audio tapes can be made available to the media for use in broadcasts and to schools for educational purposes. It was felt that this feature should be better advertised and promoted. Also, the Committee recognizes that important debates in the Assembly can be filmed for distribution or televised, with the permission and direction of the Speaker. While no recommendation is being made the Committee trusts that the Speaker and or the Management Services Board will examine ways to utilize this audio broadcast capability.

CONFLICT OF INTEREST

The Committee found that the provisions regarding "conflict of interest" in the Legislative Assembly Act are confusing at best. It was felt that simpler layman's language should be provided for the benefit of members. It was pointed out that the new Elections Act would address some of the concerns of Members, especially those that have been considered too restrictive. The Committee does recommend that:

The MSB develop acceptable layman's language that describes the guidelines for conflict of interest to be distributed to all Members of the Assembly in the Member's Handbook.

The Committee was provided with copies of the Conflict of Interest guidelines currently in use by the Executive Council. The Government Leader has indicated that his staff has been instructed to review those guidelines against those adopted by other Cabinets. The Committee applauds this initiative and trusts that if a new Standing Committee on Rules etc. is formed that it will be given the opportunity to review and comment on any new guidelines to be proposed. The Committee would suggest that at a minimum the guidelines should require Ministers to file a notice of disclosure with the Government Leader within 30 days of appointment and to divest themselves immediately of any holdings if so directed by the Leader.

AGENCIES BOARDS AND COMMISSIONS

The Committee in its review of other jurisdictions found that many had developed a process that allowed for the review of government agencies, crown corporations, commissions etc. The Committee feels that such a review is of value and that this Assembly needs a method of examining the work of the approximately 35 boards currently in place as well as the corporations, such as the Liquor System, and the WCB.

The Committee noted that currently, annual reports of many of these agencies are tabled in the Assembly, and thereafter receive little or no attention of the members.

The Committee, therefore, recommends that:

a) **There be a new permanent committee to be named the Standing Committee on Agencies, Boards and Commissions; and**

b) **That rule 84 be amended to include this committee. It would the read:**

84. "...to compose the Standing Committees of the Assembly, for the following purposes:
On Legislation; On Finance; On Public Accounts; on Rules, Procedures and Privileges (if adopted); On Agencies, Boards and Commissions..."

The Committee would further recommend that among the terms of reference of the Committee (called ABC's for short) should be:

i) **the committee shall review and comment on the annual reports and financial statements of ABC's;**

17-87(1)

ii) **make recommendations to the Assembly on appointments, terms and memberships of ABC's;**

iii) **examine ABC's for redundancy and overlapping;**

iv) **examine remuneration of members of ABC's;**

v) **make recommendations on the continuance or discontinuance of ABC's.**

87(1)

The Committee also recommends that **all reports tabled in the Assembly from Agencies, Boards and Commissions should be referred automatically to the Standing Committee on ABC's for its review.**

PRIVILEGE

The matter of privilege was of particular concern to the Committee. The guidelines and rules of several jurisdictions were reviewed. It was determined that considerable clarification of our rules and procedures was needed. The Committee found that the Provinces of New Brunswick and of Quebec had written rules in formats that best suited the needs of this Assembly. Our rule 31, regarding statements in press reports was considered to be inappropriate. It was felt that rising at any time to discuss personal attacks by, or inaccuracies in, the press was an improper procedure. It was the opinion of the Committee that these instances did not consitute a real breach of privilege as the attack or error did not occur within the House. It was felt that the National Assembly of Quebec had best addressed this issue and the Committee recommends that this Assembly adopt their wording with some slight modification. This would result in the following:

1. **Delete rule 31** and replace it with,

2.

31(a) With leave of the Speaker, any Member may explain a matter which, although not a contempt or breach of privilege, concerns him in his capacity as a Member of the Legislative Assembly. In particular, he may explain that he has been misquoted or misunderstood, or deny published accusations against him. His explanation must be clear and concise and no debate shall be allowed, and

31(b) Prior to making his remarks he must provide written notice, at least one hour in advance, to the Speaker setting out the substance of his comments. If the Member's remarks are in response to a writing he must attach a copy of it to the notice given to the Speaker. If his remarks are in response to words uttered, they must be noted down and included with the notice to the Speaker.

The Committee further recommends that:

the MSB amend the Member's Handbook to include a more detailed and easily read explanation, with examples, of breach of privilege.

The Committee suggests that a good example would be section 55 of the National Assembly Act of Quebec.

CONCURRENCE FROM THE COMMITTEE OF THE WHOLE

The Committee was of the opinion that the motion to concur should require a seconder and be voted upon in the usual manner. Having agreed to that principle, considerable debate followed as to the disposition of matters that had been agreed to in Committee of the Whole, especially if the motion to concur is defeated. Under our current rules defeated motions cannot be reentered during the same session. Defeat of the motion to concur might then mean that none of the issues decided upon during that session of Committee of the Whole could be reintroduced. The Committee felt that on occasion members could disagree with the decision of the Whole as regards one item on its agenda and might be able to convince enough Members to halt that items advance by defeating the motion to concur. This would have the affect of halting progress on all those other items with which Members agree and this might, therefore, influence the vote. The concern followed that to disagree with a bill might delay passage of motions approved in the Whole, for instance in response to a petition. The reverse would also be true that to disagree with a motion might stop progress on needed legislation.

In order that these situations can be avoided and still allow for the seconding of and voting upon the motion to concur the Committee makes the following recommendation:

It is recommended that a new rule be adopted that shall be:

82(1) The report of progress from the Committee of the Whole to the Assembly shall be in two parts;

a) a report of progress regarding Bills under consideration, and

b) a report of progress regarding other matters considered by the Committee of the Whole.

82(2) Following each report of progress the Speaker shall call for a motion to concur and for a seconder to that motion. The question shall be put and decided without debate or amendment.

MEDIA COVERAGE - A PRESS GALLERY

The Committee invited representatives of Northern media to respond to the concept of a Press Gallery. This would be a formal recognition of members of the media, which would include rules for the conduct of its members. Members of the Assembly could then clearly identify a member of the press, organized and structured opportunities for the media to meet and question Members could be arranged etc. It was suggested that this could eliminate some of the confusions thought to exist. The Committee felt that this would make it easier for the media to have access. The respondents from the media expressed their satisfaction with the current process, especially noting the informality and spontaneity as positive elements. The Committee therefore has made no suggestions or recommendations for change.

OTHER BUSINESS

The Special Committee on Rules, Procedures and Privileges reviewed other matters since the delivery of its second report at the June Session, 1986.

1. The Assembly referred motion 4-86(2) to the Committee which would direct the Officer of the Assembly in the chair to have a Member who appears intoxicated dismissed from the proceedings of the House immediately. The Committee made recommendations to the House, in caucus, and this matter has been concluded.

2. Rule 55 concerning written questions was reviewed. Members should note a typographical error in rule 55(2) - in the second line Member should read Minister. Another typo is in 55(4) - the reference should be Rule 55(2) not 55(3). It is the opinion of the Committee that 55(3) required that the Clerk be asked to give a report of all returns to written questions received and filed in accordance with Rule 55(2). Following the Clerk's report a Minister pursuant to Rule 55(4) could then rise to read his return.

In a recent ruling the Speaker has directed that upon the item "Return to Written Questions" being called Ministers, subject to Rule 55(2), may rise to read a statement. When no Minister rises upon this item being called the Clerk will then be asked to report to the House the returns to written questions which have been filed.

The Committee recognizes that the Speaker has authority to interpret and administer these rules and does not wish to recommend any change to the procedure he has implemented.

COMING INTO FORCE

The final recommendation of the Special Committee on Rules, Procedures and Privileges is that recommendations, suggestions, and rule changes resulting from this third report come into effect with the commencement of the 11th Assembly.

APPENDIX A

MATTERS OF CONFIDENCE IN THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

TABLE OF CONTENTS

		Page
PART I	INTRODUCTION	1
PART II	THE PRESENT SYSTEM OF GOVERNMENT IN THE NORTHWEST TERRITORIES	4
PART III	CONSTITUTIONAL DEVELOPMENT IN THE BRITISH COMMONWEALTH WITH SPECIAL REFERENCE TO SMALL AND NON-PARTISAN JURISDICTIONS	
	A. GENERAL PATTERN OF CONSTITUTIONAL DEVELOPMENT	20
	B. ELECTED EXECUTIVES AND GOVERNMENT BY COMMITTEE	23
	C. THE EXECUTIVE AND CONFIDENCE IN MODERN COMMONWEALTH CONSTITUTIONS	30
	WESTERN SAMOA	33
	COOK ISLANDS	38
	PAPUA NEW GUINEA	53
	SOLOMON ISLANDS	62
	KIRIBATI	68
	TUVALU	71
	VANUATU	73
	MARSHALL ISLANDS	74
	FIJI	75
	AUSTRALIAN TERRITORIES	78
PART IV	LESSONS FROM RECENT COMMONWEALTH EXPERIENCE	82
PART V	THE ESSENTIAL CHARACTERISTICS OF RESPONSIBLE GOVERNMENT	93
PART VI	OPTIONS FACING THE ASSEMBLY	124
APPENDIX	I - MINISTER'S INSTRUCTION TO THE COMMISSIONER OF THE NORTHWEST TERRITORIES	
APPENDIX	II - NON-PARTY GOVERNMENT IN BRITISH COLUMBIA	

MATTERS OF CONFIDENCE IN THE LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES

I. INTRODUCTION

The terms of reference of the Special Committee on Rules, Procedures and Privileges of the tenth Legislative Assembly of the Northwest Territories include an examination of the powers, rules, procedures, practices and organization of the Legislative Assembly in relation to "the accountability of the Executive Council to the Legislative Assembly".

I have been asked to advise the Special Committee on the application of the conventions relating to "confidence" to the Government and in the Legislative Assembly of the Northwest Territories. "Confidence" is central to the system of "responsible government". A government dependent on the confidence of a representative body is a responsible one. I have, therefore, in light of the Committee's terms of reference, taken my task to be to consider the applicability, and means of applying, the system of responsible government to the Executive Council of the Northwest Territories. I have been specifically asked to recommend principles for raising and dealing with questions of confidence in the Assembly, to identify optional ways of or procedures for incorporating the concept of confidence into the governance of the Territories, and to make recommendations as to whether or not any such principles or procedures should be included in Territorial legislation or the Rules of the Legislative Assembly. While not having been expressly asked to do so, I have felt free to consider whether or not amendments are desirable or necessary to the Northwest Territories Act (Canada).

To put all that in a nutshell: I am to look at the ground-rules for addressing future questions of confidence in the Legislative Assembly.

Account must be taken of the particular political culture of the Northwest Territories. This culture, different from that now obtaining elsewhere in Canada, is at least as important a factor as the present legal and institutional framework of the Territorial constitution, which I have assumed can be altered or moulded if there is a will to do so. Nonetheless, constitutional usages which depend for their validity on that distinctive political culture alone will be very brittle and inherently unstable. Usages should be adopted which will not preclude or

obstruct evolution in the underlying premisses of Territorial political life. The political ethos which constitutional arrangements must serve may well develop, either in directions new to Canada or towards the party political structure which obtains throughout the rest of the country. Avoiding inflexibility is even more important where changes in legislation are contemplated.

It has been my assumption throughout that the Special Committee, the Assembly, the Dominion Government and public opinion in the Territories will desire to secure to the Northwest Territories, while they remain undivided, the blessings of responsible government. The problem is to apply responsible government in a way that is consistent with the political culture of the Territories. Fortunately, there is now a fair body of experience and experiment in assimilating responsible government to the local circumstances of other Commonwealth jurisdictions which do not afford the conditions in which responsible government evolved in the United Kingdom and in the original Dominions of the Empire. None of that experience may be directly relevant to the Northwest Territories, but a lot of it may be helpful.

On division of the Territories, entirely new forms of government may be devised, but that is not my concern. Consequently, I have not considered other forms of government. I am not expert in them. I was not asked to. And I venture to suggest that it would be a waste of time. It is simply not politically feasible at the moment to set about creating a wholly different form of government within one part of the Canadian federation, and especially in a part still subject to the paramount legislative power of the national Parliament, while the central issue of division remains unsettled. At some point those responsible for the Territories' destiny will have to address the question: Why is responsible government desirable? For the present it is sufficient to answer that any other form of government yet devised entails autocracy, a rigid separation of powers, or the possibility of the unseemly spectacle of a government administered in the Queen's name reduced periodically to a state of inaction and helplessness.

Many people have warned against the folly of formulating constitutional principles for a country one has never visited. Despite the self-confidence of Jeremy Bentham, who was quite prepared to draft constitutions for countries as different as

revolutionary Peru or Manchu China, or of Rousseau who even essayed one for the Polish Kingdom, there are no fundamental principles which enable one to work out a constitutional scheme for any country provided one has information about its social, political and economic conditions. Limited by the assumptions I have stated and a total want of local knowledge, and confined to one aspect of the constitutional arrangements of the Territories, I am not confident to do more than to draw lessons from the way in which other jurisdictions have grappled with the problems of making responsible government work in settings that do not reflect those in "the big battalions", the United Kingdom, the Parliament of Canada, the Commonwealth of Australia, New Zealand or India. Those lessons inspire suggestions, but they will be suggestions only. I am acutely conscious, having suffered from so many of them myself, that the pronouncements of "hexperts" can be a bore, or even downright tiresome.

Every constitutional arrangement is a product of history, even if it is an elaborate written document put together by a team of experts. Every country or jurisdiction must have a constitutional arrangement that as nearly as possible suits itself. There are, however, some basic ideas which emerge from British history and literature and from the mass of laws and institutions which evolved in Britain over a thousand years and which the many jurisdictions of the Commonwealth, including the Northwest Territories, have inherited. The Territories may be able to adapt these ideas to local basic ideas, but they can not reject them altogether while remaining part of a Canada herself blessed (or afflicted) with a very inflexible constitution. The free institutions which developed over a thousand years have been placed at the disposal of the Territories, as with most parts of the Commonwealth, in barely a century. And yet they must be adapted, not in a further nine hundred years, but virtually at once to local needs and cultures. On the other hand, the Northwest Territories do enjoy a luxury denied to many parts of the Commonwealth, the opportunity to follow yet another aspect of British constitutional practice by adapting institutions to meet new needs as they arise through decisions made in the caucus. All that will be required is the self discipline not to want to write everything down in the form of rules. Transplanted British institutions, though no doubt carefully tended by the prejudices and training of lawyers, will then have the chance to put down roots and grow in local soil producing fruit at once exotic and wholesome. As Lord Mildew said in Doggett v. The Port of London Authority: "There is no precedent for anything until it is done for the first time".

II. THE PRESENT SYSTEM OF GOVERNMENT IN THE NORTHWEST TERRITORIES

The constitution of the Northwest Territories, like any polity owing anything to the British tradition, exists in accordance with a certain legal framework. The constitution itself, however, is more than that framework and has evolved by the development of customs and usages. Those in the Territories have gone a very long way beyond the letter of the constitution in order to give life to self-government, and to meet local needs and, in particular, local traditions as to the way collective decisions should be arrived at. The difference between the letter and the practice of the Territorial constitution is probably more marked than is the case in any Canadian jurisdiction or in any parliamentary country of the British Commonwealth excepting only the United Kingdom itself.

It is a commonplace to say that an unwritten constitution respects the written constitution. But it is also true that the constitution possesses certain characteristics which are all important, which are not found set out in any law, and without which such constitutional laws as there are make little sense. This is especially true in the case of the Northwest Territories where the apparent conflicts between the fundamental constitutional document, the Northwest Territories Act (Canada), on the one hand, and local legislation on the other, and between those two sources and the actual practices of the local representative body and executive government are quite remarkable.

It is not necessary for me to go over the history of the advance of the Northwest Territories to a fairly full measure of self-government. In a later section I shall outline the general pattern of the development of representative institutions, and of responsible government, in the British Commonwealth. The evolution of constitutional arrangements in the Territories is quite consistent with that general pattern. It has simply stopped short of the final step.

In constitutional terms the Territories have been throughout their existence a colony, even when enjoying responsible government before 1905, with Ottawa substituted for Westminster and "Downing Street" (the general term, usually of obloquy, for the Colonial Office). The basic constitutional document is now the Northwest Territories Act R.S.C. 1970 C. N-22 as amended.* This Act sets

* R.S.C. 1970 (1st supp), C.48; S.C. 1972, C.17; 1974, C.5; 1976-77, C.34; 1977-78, C.8; 1978-79, C.14; 1984, C.40

up a typical colonial form of government where limited representative institutions have been granted. The executive power is to be exercised by a Commissioner (Sections 3(1), 4 and 5) under instructions from time to time given by the Governor in Council or the Minister of Indian Affairs and Northern Development. Unusually, no Council is provided for to aid and advise the Commissioner in the carrying on of the government of the Territories. Nevertheless, such a Council has existed since 1921, first as an inter-departmental committee, then as a combined executive and legislative Council, then under the title of an Executive Committee (containing an increasing number of elected Council Members) and finally since 1985 under the traditional title of Executive Council.

The Act provides for a representative body which it calls the Council of the Northwest Territories. Legislative power, as set out in the Act and later delegated under its provisions, is vested in the "Commissioner in Council" defined to mean the "Commissioner acting by and with the advice and consent of the Council of the Northwest Territories", the traditional form of words to describe the legislative union of the Crown and the House or Houses of the Parliament. The Council may consist of from fifteen to twenty-five members, and the power to set the number within those limits, the constituencies from which they are elected, the qualifications for membership, the grounds of disqualification, the election laws, the franchise and the means of dealing with controverted elections, are vested in the Commissioner in Council, that is in the Territorial Parliament. The Council is now fully elected on a universal franchise. There are no official members and the Commissioner no longer presides over the Council, provision being made since 1974 for a Speaker being one of the members of the Council elected by its members. The Commissioner in Council does not enjoy power to legislate for the privileges, immunities and powers of the Council or of its members.

The maximum duration of a Council is four years from the date of the return of the writs for the general election. The power of dissolution before a Council expires by effluxion of time is not vested in the Commissioner (even under instructions) but in the Governor in Council (Section 8). The power is circumscribed by the requirement that the Governor in Council act after consultation with the Council when he deems consultation to be practicable or, otherwise, after consultation with each of the Members of the Council with whom consultation can be effected.

Given that the Council is now fully elected, consultation with its twenty-four members as a body would seem to be by definition impracticable, although they could no doubt express themselves by Resolution. Consultation with some Council Members and not others would appear to be invidious. Consultation with any Member is probably also impracticable given the locale of the Privy Council Members who would have to do the consulting before tendering advice to the Governor General. For the moment, then, premature dissolution of the Council without the expressed consent of a majority of the Members would seem to be a difficult manoeuvre of last resort and an open invitation to litigation as to whether the terms of Section 8(2) of the Act had been observed. As overseas experience teaches that Assemblies are disinclined to vote for their own early dissolution, the Territories come close to having a fixed term Legislature. The reservation of the power of dissolution to Ottawa, rather than its being vested in the local representative of the Crown (even if under Instructions) is a peculiar provision, inconsistent both with general Empire and Commonwealth practice and with internal self-government.

The legislative powers of the Commissioner-in-Council, which I shall hereafter treat as those of the Council (called locally the Legislative Assembly by operation of the Interpretation Act) are prescribed in several places in the Act. The exercise of those powers by the making of Ordinances (called locally Acts, again by operation of the Interpretation Ordinance [Act]) is subject to disallowance by the Governor in Council within two years of the passage of any Ordinance. The Parliament of Canada can still legislate for the Territories on any matter, including those delegated to the Council, and statutes of the Parliament extending to the Territories, either expressly or by necessary intendment, are paramount. A recent example of this paramountcy, exercised in a positive way to cure one of its negative manifestations, is found in the Condominium Ordinance Validation Act S.C. 1984-85-86, C. 46, validating the Territorial Condominium Ordinance R.O.N.W.T. 1974, C. 10, which happened to be in conflict with the Land Titles Act (Canada).

The legislative powers of the Council, while extensive, are not of the same extent as those of provincial Legislatures. Most notably, they do not cover the constitution or the executive government of the Territories, and most Crown lands and natural resources. Nevertheless, the Commissioner in Council, the

Council being termed since 1974 the Legislative Assembly, has enacted first a Legislative Assembly Act (1974) and subsequently a Legislative Assembly and Executive Council Act (1985) which provide extensively for the composition, sittings, immunities and privileges, Committees, etc. of the Legislative Assembly, and for the executive government of the Territories. It is these latter provisions which are of particular concern and run as follows:-

> 55.(1) There shall be an Executive Council of the Northwest Territories composed of persons, appointed by the Commissioner, whom the Legislative Assembly recommends to the Commissioner for appointment to the Executive Council.
>
> (2) The persons appointed pursuant to subsection (1) hold office during the pleasure of the Legislative Assembly.
>
> 56. The Executive Council is responsible for the executive government of the Northwest Territories.
>
> 57. There shall be a Government Leader chosen by the Legislative Assembly.
>
> 58. The Commissioner, upon the advice of the Government Leader, may appoint under the Great Seal, from among the members of the Executive Council, the Ministers of the executive government.
>
> 59. One Minister may be appointed to have authority over more than one department or to hold more than one title.
>
> 60. A Minister shall, before assuming any duties of office, take an oath of allegiance in Form 1 and an oath of office in Form 4 of Schedule C before a judge.
>
> 61. A Minister shall have responsibility for all matters arising within the department over which he has authority.
>
> 62.(1) A Minister who is or expects to be temporarily absent, incapacitated or unable to act may request the Government Leader to designate another Minister to act in his stead.
>
> (2) Where a Minister has requested the Government Leader to designate another Minister to act in his stead or where a Minister is unable to make such a request but is temporarily absent, incapacitated or unable to act, the Government Leader may designate another Minister to act during the temporary absence, incapacity or inability of that Minister.
>
> (3) All acts done by a Minister designated under subsection (2) shall have the same effect as if done by the Minister in whose stead he is acting.
>
> 63. The Executive Council may establish such committees of the Executive Council to aid and advise in the executive government as it deems advisable.
>
> 64.(1) Subject to section 15 of the Northwest Territories Act (Canada) and any enactment, a Minister may enter into agreements for or on behalf of the department over which he has authority or the Government of the Northwest Territories.

> (2) A Minister may, by written authorization approved by the Executive Council, delegate the power to enter into agreements under subsection (1) to any person in the public service, subject to such limitations or conditions as the Minister may set out in the authorization.

It is obvious that I consider Sections 55 - 64 of the Legislative Assembly and Executive Council Act 1985 to be ultra vires the Commissioner in Council.* However, as they state principles which must have been thought to underlie the creation of the Territorial Executive as it is in practice constituted, those sections can not be simply ignored. The following observations can be made about them:-

1. An Executive Council is established and it is made responsible for the executive government of the Northwest Territories. The Commissioner has been supplanted and either executive power is vested direct in the Council, or executive power remains with the Commissioner but the Council is made responsible for its execution. Both forms are in common use in Commonwealth constitutions. But it would be better if one or the other were expressly stated. Only the latter is in any way consistent with the Northwest Territories Act.

2. Neither the Executive nor the Ministers as a body are clearly made collectively responsible to the Legislative Assembly.

3. The Members of the Executive Council are appointed by the Commissioner but he may appoint only those recommended to him for appointment by the Legislative Assembly. Members of the Executive Council need not be members of the Assembly. No provision is made for appointments while the Assembly is dissolved, is not in Session, or has not met after a general election. The manner in which the Assembly is to arrive at and convey its recommendations is not provided for.

4. The Legislative Assembly chooses a Government Leader, but he can not be a member of the Executive Council unless he is independently recommended for appointment to it by the Assembly. He need not be a member of the Assembly. Death, incapacity or resignation of the Government Leader while the Assembly is not in Session, is dissolved, or has not met after a general election is not provided for.

---

* In addition, the form of Oath of Allegiance set out in Form 1, Schedule C, would appear to be invalid as contrary to the Oaths of Allegiance Act R.S.C. 1970 C. O-1

5. The Commissioner, acting on the advice of the Government Leader, appoints the Ministers of the executive government from among the members of the Executive Council. There can, therefore, be members of the Council who are not appointed Ministers. The Government Leader allocates the portfolios.

6. Members of the Executive Council, and hence, Ministers, hold office during the pleasure of the Legislative Assembly. The Act does not say how this pleasure is to be withdrawn, or whether it must be withdrawn from the Council members as a whole, or may be withdrawn from members individually. Nothing is said as to whether a Ministry must after a general election or at any other time submit itself to the pleasure of the Assembly.

7. A Minister has responsibility for all matters arising within the department or departments over which he has authority. To whom this responsibility is owed is not stated. Nor is it clear whether his colleagues are absolved from all responsibility for his maladministration or failures in office.

The sections in the Legislative Assembly and Executive Council Act dealing with the Executive Council do not by any means tell the whole story about the Council, its members, how they get elected and their relations with the Legislative Assembly.

The Territorial Ministry is in fact constituted after this wise. At each general election a Council of twenty-four elected members called a Legislative Assembly is elected. Thirteen members are from the West, and eleven from the East. A minimum of four executive councillors are chosen by the whole Assembly from among the eleven eastern members and a minimum of four from the western members. The western members meet in a caucus outside the Assembly and choose nominees from amongst themselves (six, in the last instance). The eastern members likewise caucus and choose nominees from amongst themselves (six, in the last instance). All twenty-four members in a "caucus" of the whole Assembly, but meeting outside the Assembly in a large Committee room adjacent, vote on the choice of four of the (six) eastern nominees and all twenty-four members vote on the choice of four of the (six) western nominees. The voting is done by exhaustive secret ballot and "plumping" is forbidden. The eight Assembly

members elected to the Executive Council then meet together to see if they can agree on one of their number to be the Government Leader. If they can, that choice is put to the caucus of the whole Assembly and is expected to be endorsed. If the group of eight can not agree on a single name, the names of those wishing to be elected are sent to the caucus of the whole Assembly which carries out an election using the secret ballot.

The "rules" for the conduct of all the caucus procedures are purely matters internal to the caucus and are not public documents. The actual conduct of the balloting is in the charge of the Clerk of the Legislative Assembly.

When the system just outlined was first used after the 1979 general election the Executive members chose a single candidate for Government Leader, who, having been endorsed by the caucus became the Government Leader "chosen by the Legislative Assembly". He was in fact chosen by his Ministerial colleagues. In 1983, after the next general election, the eight Executive Council Members chosen by the Assembly could not agree upon a single nominee for the position of Government Leader. Two names went forward to the Assembly members who chose between them. The Assembly members did not have the opportunity to elect either their free choice or even their choice from amongst the eight Executive Council Members, a choice which could have been expressed by exhaustive ballot. In 1985 the positions of Executive Councillors came up for election again and a fresh choice of Government Leader was made, but again only as between two of those Executive Councillors. The substance of Section 57 of the Legislative Assembly and Executive Council Act was ignored, although the form was doubtless observed.

The 1985 Executive reconstitution did not follow a general election. It was, roughly speaking, a "mid-term" review, the life of the Assembly being four years with little likelihood of earlier dissolution save with its own consent. That there should be a mid-term review was decided in the caucus in 1983. As the middle of the four year term approached there appears to have been uncertainty as to when exactly the review would take place and whether all Ministers, that is to say Executive Councillors, were bound to resign. In the result all did. The dynamics of the situation included the usual mix of human motivations, ambitions of those not in the executive, dissatisfaction with some who were, dissatisfaction of some

Executive members with others. Of the eight Executive members, six were returned at the caucus election. One of the two not returned was the Government Leader. A fresh selection of a Government Leader from amongst the eight elected Executive Members was then carried out as noted above. If the former Government Leader had been returned to the group of eight would he have continued as Government Leader, with or without an election? In the result, a new Government Leader assumed office after two years, certainly a dramatic departure from the unhealthy Canadian practice which sees political leaders staying in office as Prime Minister or as Premiers for very extended periods.

The result of the caucus elections held after each general election and of the mid-term review, is to give some meaning to the principle embodied in Section 55(1) of the Legislative Assembly and Executive Council Act that Executive Councillors hold office during the pleasure of the Assembly, even if that pleasure is expressed outside the Assembly and in a wholly systematic way at fixed intervals. Can the pleasure be withdrawn at other times? Can it be withdrawn from a single Minister, or from the Government Leader alone? There would appear to be no reason why not, except perhaps an understanding implicit in the caucus "rules" and decisions that those elected will be left to get on with the job for two years, or perhaps four, and that any review will take the nature of a "spill"* conducted outside the Assembly in the caucus.

Early in 1986 one member of the Assembly did contemplate a motion for a resolution withdrawing the pleasure of the Assembly from an individual Minister. It was not proceeded with. Even if such a resolution were moved and carried in respect of the Government Leader, the result would seem to be merely a vacancy in the Executive Council, and necessarily a fresh choice of a Government Leader, but not the demise of the whole Executive Council, which would be the result of carriage of a motion of no-confidence in or censure of a Premier or Prime Minister in any other self-governing jurisdiction in the Commonwealth.

The effect of the practices used to furnish the Commissioner of the Territories with Ministers to carry on the Territorial Government are as follows:-

1. The Government Leader and the seven other Ministers are all members of the Assembly.

---

* A "spill" is the name for the procedure in the Labour parliamentary caucuses in Australia under which all offices, Leader, Deputy Leader (and on occasion Ministers) are declared vacant and the party caucus elects people to them from scratch.

2. The eight Ministers constituting the Executive Council run the government of the Territories and the Assembly consents subject to periodic review of the membership of the Executive Council. This does not really seem much like decision making by consensus after dialogue and input. But perhaps other practices of the Assembly in relation to legislation and finance make good this deficiency.

3. The eastern and western members act to some degree as members of two coalition parties in the selection of Ministers.

4. There is no guarantee that a group of eight Executive Councillors, chosen as individuals, no matter who the Leader is, will have the confidence of the Assembly.

5. The Government Leader owes his position not to the electorate, nor to the favour of the Commissioner, nor even to an election by the Assembly members, but to his seven Ministerial colleagues. If they agree on him, there is no election at all. If the Executive Councillors can not agree on a single nominee the Assembly-in-caucus may only choose from amongst the names put to it. The Assembly has no free choice from amongst all its members, nor even a free choice from amongst the eight Executive Council members. It is quite possible for the present system to produce either

   a) a Government Leader of whom a majority of, or even all of the other Executive Councillors, disapprove; or

   b) a Government Leader for whom a majority of the Assembly would never vote in an unrestricted vote.

6. The Government Leader, whether imposed on his colleagues by vote of the Assembly in a contested situation or imposed on the Assembly by his colleagues, has no authority over his colleagues. He does not appoint them. They have their own independent source of legitimacy. He may very often owe his position to their favour. Even the withdrawal of the pleasure of the Legislative Assembly in the Government Leader would not affect the position of his erstwhile colleagues. They are not part of his team and they do not stand or fall with him. Although the other seven Ministers are not affected by the fate of the Government Leader, there is not even any requirement that a motion for withdrawal of the Assembly's pleasure in him also nominate a successor. The whole question of succession is unprovided for.

7. The Executive Council, while it may develop a collective solidarity, need not have one. It is likely it would not, for there is no common bond between the Members and no-one who can enforce any collective responsibility. Even the mid-term review is conducted on an individual basis, and not on the basis of confidence in the Executive Council as a whole.

8. There is in no sense at all an alternative government in waiting. Nor can there be as the Ministers of the Territorial Government do not take their positions because they are part of a team, but because they are elected individually, albeit nominated in the first instance by the eastern and western groups in the Assembly. Should motions of no-confidence (or "withdrawal of pleasure") be introduced and carried, it may well be that an alternative group of eight Executive Councillors chosen as at present, or the existing seven with a new Leader, will equally lack the confidence of the Assembly. And yet there is neither requirement that an alternative group or Leader be proposed in a motion for withdrawal of pleasure nor a ready access to dissolution.

9. In no sense can the electorate pass judgment on the Ministry and its record. It is, first of all, a largely accidental grouping of men. They need not stand together, and it is by no means certain that even if re-elected to the Assembly they will be Executive Councillors again be they as individuals ever so popular with the whole Territory for their wonderful administration of their departments. Equally, be they ever so unpopular everywhere but in their own constituencies there is no guarantee they won't be back on the Executive Council after the election.

10. The most significant decisions in the Territories' political life are taken in secret in a situation in which deals of all kinds could be struck and in which principle and ability might be sacrificed.

11. The two year review procedure if maintained may inhibit any desire to test the confidence of the Assembly in the Ministry. It may be thought that the Ministry should have its head for two years. Alternatively, there may be sufficient faith in the degree of openess of Ministers to suggestions from members as to stifle any desire to test or withdraw confidence from the Ministry or from individual Ministers. If Ministers now take their lead largely from

the wishes of members that may be good enough. Whether such a happy situation will be proof against differences over principle or simple ambition is another question.

There are other distinctive features of the Assembly in relation to both finance and legislation. Draft Bills are dealt with in detail before introduction into the Assembly by the Legislation Committee. The Committee often changes the draft before it. As the Committee consists of ten non-Ministerial members (balanced as between East and West) there are likely to be six members of it in support of any Bill. These plus the Ministry total fourteen in a House of twenty-four including the Speaker. Legislation is, therefore, unlikely ever to be defeated. It has, however, on occasion been amended in Committee of the Whole in the Assembly. Even if the Legislative Committee has in future only seven members, the majority of that number, four, plus the Ministry of eight, will constitute an effective majority of 12:11 in the Assembly for the principle of any Bill which emerges from the Committee. In a sense then, the Assembly as a whole acts as an Upper House in respect of legislation while the Legislative Committee acts as a Lower House.

There is a Standing Committee on Finance. It does not prepare budgetary or financial proposals. The Executive Council or Ministry does that, but apparently after a certain informal canvassing of Assembly members. Even so the financial initiative of the Crown, protected by Assembly Rule 70 (but not by the Northwest Territories Act) is observed. The Committee receives the draft budget expenditures which it examines in December and January. The examination can lead to demands that services or facilities be extended to or improved in certain areas. The Committee's report on the expenditures may include recommendations that a certain new or improved service be included in the estimates. The Budget itself is brought in in February or March. At that time a member may move in the Committee of the Whole that the Executive Council be asked to provide for that new or improved service. The Executive Councillors do not feel obliged to vote against such a recommendation and may abstain on the vote. Thus there is a clear breach of one of the usual tenets of responsible government that Ministers must vote for the Ministry's measures. Just what would happen if the Assembly rejected the Budget in general, or denied supply, or rejected some particular expenditure in it after it

was made clear by those moving and supporting the deletion that it was to constitute a test of confidence in the Government, is unclear. Would carriage of such a motion, would rejection of the Budget, or denial of supply, amount to withdrawal of the Assembly's pleasure, and if so, would it be from the Executive Council as a whole, or just from the Minister of Finance? As noted already there is in no sense at all any alternative government in waiting and no easy access to an election should the Assembly decline to vote for its own dissolution.

It may be that Executive Councillors make pledges to one another as to their conduct to one another and in the Assembly. Such pledges are political agreements subject to all the assaults of political pressures and of ambition.

It remains to say something about the caucus system. There are clearly three caucuses: of the East, of the West and of the entire Assembly. The dynamics of the relationships between these three must make a fascinating study. My concern is simply to note that as a result of the inter-relationship between the three, the practices and usages of the Territorial constitution have been developed. They are still in a quite malleable shape and are hardly yet conventions with which anyone need tremble to tamper. Given the passive role Ottawa has chosen to play in the evolution of the Territorial executive, and its habit of not issuing a formal set of Instructions to the Commissioner, but of advising him by letter* to accede to individual moves towards responsible government desired by the Ministers and the Assembly, there is no reason why further rules should not be agreed upon in the caucus system to refine the present executive system or to introduce new elements into it. There should be one note of caution sounded. The caucus, or rather caucuses, are acting as a continuing constitutional convention. The Commissioner has in effect been instructed to act in accordance with this convention's decisions insofar as the constitution of the Territorial Executive is concerned. The people themselves are getting no say in the rules this constitutional convention is developing. This may be consensus government, but it is the consensus of an elite. Perhaps, too, that elite is making some decisions in the dark. Grand coalitions have a way of stifling public debate.

---

* As an example, the substance of the most recent letter is attached as an Appendix I

The very positive side of the caucus's role in adopting and adapting constitutional rules and practices as it goes along is that the Commissioner has been able to remove himself from the actual executive government and yet not have to act in his own judgment or on an estimate of who is likely to or best able to command support in a non-party Assembly or on "irresponsible" advice in picking Government Leaders and Ministers. This sorry fate befell the Governors in several colonies and provinces which had been accorded responsible government but had no party system. A House of independents can make the Queen's Representative's life a misery when no machinery exists to throw up a Ministry guaranteed some degree of confidence in the House. The Governors of New Zealand before 1896, or of South Australia before 1900, for example, were always facing collapsing governments. The almost farcical government of British Columbia before the advent of parties has recently been chronicled by Dr. E.A. Forsey* and is reproduced with permission as Appendix II. Whatever the gaps that may yet have to be filled the present set up in the Territories does seem to afford that essential element of stability and the sine qua non of British constitutional government, purposeful government, even if only for a two year period. Perhaps two years is long enough between reviews. What happens when it is considered too long is the problem of the future.

The caucus system may be serving another purpose too. Neither the caucus of the Assembly as a Whole nor the geographical caucuses are as yet showing the defects of the Labour caucus system in Australia and New Zealand where decisions are taken to be supported by all in the House on pain of expulsion. At present there is nothing in the Territories to be expelled from. So the caucuses may allow the members to do what members of an Assembly are not supposed to do, and that is take some hand in administration. The executive of the Territories may be informed in a more constructive way than is usually the case in its administrative actions. Perhaps that is not the case. But what I have been told, the literature I have seen, and the emphasis placed on consensus government, would indicate that members of the Assembly do not see their roles simply as those of criticising, ventilating grievances, examining legislation and estimates in detail and either consenting or changing the Ministry from one team to another. If consensus means anything

---

* In his Introduction to the new combined Edition of his "The Royal Power of Dissolution in the British Commonwealth" and Dr. H.V. Evatt's "The King and His Dominion Governors"

beyond its dictionary definition, and is not just an agreeable label, it must mean that all the members of the Assembly play a part in decision making. This has rarely been the role of a member of a deliberative assembly on the British pattern. But if the scope of Territorial affairs is such, and the interest of all members is up to it, then the delegate status of Ministers may well accord with what is required. Where Ministers are subject to recall and actively take other Members into account in day to day administration, questions of confidence in the Assembly may be undesirable. I can not see how they can be outlawed in a free Assembly and in a polity aiming to have responsible government. The raising of questions of confidence can be hedged about, but can not be forbidden. The risk of paralysis is too great. The Queen's service must be carried on.

The government of the Territories is said to have a distinctive consensus style. I have been somewhat at a loss to define that style. It is said to accord with the traditional form of decision-making of the Dene and Inuit and to be based on co-operation and interdependence. The governed contribute to the process of reaching the decisions by which they will be governed. This is contrasted with a team or adversarial approach said to be characteristic of other Legislatures. If this only means that "there is no disciplined majority party in a position to control the decision-making process"* in the Territorial Legislature, then the Territories stand in excellent company with the Legislatures of Micronesia, Melanesia and Polynesia all of whom have embraced responsible government with fervour. If it means that rigid principled stances are avoided,** this reflects responsible government as it should be practised where matters of opinion are involved, a matter explored later. If consensus government means that "all the voices in the House are fairly reflected in the decisions made"*** one wonders how the present commital of government to a committee can accord with consensus government. It may be well to try to accommodate all shades of opinion, but if there are conflicting opinions they cannot all be made to fit within a decision. They can be heard, considered, explored and weighed, but in the end there must be a decision whether it be in a village, an assembly or an Executive Council.

---

* Lynda Sorensen, ex M.L.A.

** Dennis Patterson, M.L.A.

*** Bruce McLaughlin, M.L.A. All quoted in Assembly Paper "Consensus Government"

Consensus, after all, only means an agreement or coming together of opinion, authority or evidence. A consensual decision is one involving consent as to a course of action. It does not mean unanimous consent. And consent lies at the very root of responsible government. It is government by consent after full and free debate. This central notion, often overlooked in inter-party clamour, is explored in Part III.

If, however, consensus government is taken to mean the people, or by necessity their representatives in a popular assembly, actually running the government and taking administrative decisions, seizing all policy initiatives and directing the administration of government, then it is an entirely destructive concept, already tried and found wanting between 1640 and 1649 and carefully avoided by all the non-partisan jurisdictions of the Commonwealth that have come to independence in recent years, some of which have even smaller populations than the Northwest Territories, and even stronger traditions of parley and decision-making at the village, family or local level.

It seems, however, that "consensus" does have a modern political meaning somewhere between government by consent and government by assembly. Mr. C.J. Lynch, much experienced in the ways of the Pacific and of government and legislatures there, maintains that consensus is not the same as consultation or consent. It "involves general agreement without any counting of heads and in that sense is commonplace in collective decision-making. Substantively, it involves an active avoidance of polarization, and the reaching of a generally agreed solution by consultation, discussion, and compromise. The technique is markedly different from the head counting, confrontational techniques commonly used." Even he, however, who doubts the relevance of responsible government to the Pacific state, has to concede that consensus cannot be universal. There are cases where a yes/no answer is required. And Pacific constitutions do allow these on basic matters of confidence in the government. One may beg leave to doubt just how much confrontational head counting goes on in any modern legislature except where a rigid party caucus system is in operation as in Australia and New Zealand. One could be forgiven for thinking that "consultation, discussion and compromise" is the hallmark even of the British House of Commons over the last fifteen years. Where these

---

* C.J. Lynch: "The Westminster Model in the Pacific", The Parliamentarian, Vol. 53, No. 3, July 1982, p. 138

three imperatives have been ignored, governments, even with solid majorities, have been defeated in the House.*

Once the myth that every issue in a Legislature is a matter of confidence is laid to rest, either by a re-assertion by the Members of their political will, or by a constitutional confining of confidence issues as in recent Commonwealth constitutions, there can be room for consensus and a fair degree of active participation by all Members. In the smaller jurisdictions the legislatures may well be able to approach the policy-making model as distinct from the policy-influencing model, as defined by Professor Norton.** It has been, and is, too easy to blame a self-created ogre - the party system - for a want of firmness on the part of Members and to use that same ogre as a cloak for the pursuit of personal ambition.

---

* Despite a solid majority the Thatcher Government has lost measures on Sunday shopping and Members' pay and perquisites. It has been forced to retreat on other measures before votes were taken.

** P. Norton: "Government Defeats in the House of Commons: Myth and Reality", Public Law, Winter 1978, page 360
See also his: The Constitution in Flux, Blackwell, Oxford, 1982; the Commons in Perspective, Martin Robertson, Oxford, 1981; Parliament in the 1980's, Blackwell, Oxford, 1985.

III. CONSTITUTIONAL DEVELOPMENT IN THE BRITISH COMMONWEALTH WITH SPECIAL REFERENCE TO SMALL AND NON-PARTISAN JURISDICTIONS

A. GENERAL PATTERN OF CONSTITUTIONAL DEVELOPMENT

The constitutional history of the British colony or territory of a Dominion falls naturally into two well marked divisions. During the first stage the chief interest lies in the gradual development of a representative element in the legislature which normally finds itself, as its representative character becomes more pronounced, in conflict with the executive over which it has no control. The legislature in this period has usually been unicameral and the changes it undergoes are consequent upon the introduction, into what was at first a wholly official body (often exercising both legislative power and advisory functions to the Governor), first of non-official nominees, secondly of representatives, often elected on a restricted franchise.

As the earliest form of Council performed both executive and legislative duties, there was perfect harmony between the administration and the legislature. The introduction of non-official nominees led to a division of functions: the officials meeting in conjunction with the Governor (or Commissioner) constituted an Executive Council (or Committee as in the Northwest Territories); sitting with the non-official members they made the laws. The executive was separated from the legislature although harmony between the two was still maintained because the Governor, by his power of nomination to the Council, continued to dictate its policy, especially in the early period during which the non-official members were outnumbered by the officials. It was as this non-official element in the Council increased in size that the Governor lost his legislative influence. The loss was gradual until the officials, in a minority in the Council but in control of the executive, lost control, except by persuasion, of the legislature. Always susceptible to the Governor's influence, the non-officials frequently opposed official policy and afforded publicity to legislative proceedings and complaints about administrative matters. These tendencies were reinforced over time because elected members were invariably introduced alongside the non-official nominees.* Then all the non-official members came to be elected. It was at this stage, or just before, that the officials normally withdrew from the Council which then came

* A good description of a Council of this type in operation is contained in Alec Waugh's novel, "Island in the Sun".

to be presided over by its own Speaker, and not by the Governor. The Council, though fully elected, had no direct influence over the executive body which stood apart from popular opinion, deriving its authority from the Governor's power of nomination and its policies from him and to some extent from Downing Street. The formal growth of the colonial legislature was usually completed by the division of the Council into two Houses, an Upper House elected or appointed on a bewildering array of systems, and a House of elected representatives very commonly called the House of Assembly or the Legislative Assembly. The colonial Ministry developed from the Executive Council. The harmonization of the executive and the legislature was brought about after a struggle in which the popular branch of the legislature gradually obtained control of the executive by the application of just those conventions which had enabled the House of Commons to do the same in Britain between about 1770 and 1830. This process culminated in the so called "grant" of responsible government which was achieved by Instructions to the Governor that he should henceforth either in all matters, or in a list of matters, or in all matters save those excepted, act in accordance with the advice of advisers who could command a majority in the popular House. The "grant" was usually a considered act of colonial official policy but was occasionally in the 19th Century an act of the Governor acquiesced in by Downing Street.

Perhaps a particular colony or territory has not conformed exactly to this generalisation of constitutional development. In some colonies or territories some stages were telescoped. But there were successive stages and these can be seen in the history of the Northwest Territories since 1905 to the present. The Commissioner's Instructions have now required him to act in accordance with the advice of Executive Councillors.

The achievement of responsible government was merely the first stage of constitutional development in the typical colony or territory. The second stage was marked by the progress towards independence from the colonial Power (or achievement of equal status in the federation: something not yet accomplished by the Northwest Territories or the Northern Territory of Australia). It has also been marked, whether before or after independence, by the harmonizing of the legislature with popular opinion. The devices adopted to achieve this end have included adopting the universal franchise, payment of members, shortening

the duration of Parliament, diminution of the powers or abolition of the Upper House, use of the referendum and the initiative, the destruction of a class of propertied representatives by enforcement of conflict of interest guidelines, etc. The tendency at all these steps has been the same, to make the legislature dependent upon popular opinion, just as earlier development made the executive dependent upon the legislature. There has, in short, been a constant pressure in both stages of constitutional development to destroy privilege, whether of birth, property or office, saving only in some jurisdictions the Monarchy itself.

Despite all these pressures and tendencies, the electorate has not, even in the smallest jurisdictions, come to control the Legislative Assembly and so to enforce its will upon the executive authority according to the recognized principles of responsible government. This must surely in part be because those principles evolved in a system which was avowedly not democratic, rather monarchical. But in large part it is because the effect of constitutional evolution has been to give the influence once exercised by property and vested interest to a new authority, the organized political parties. The fears once expressed that the end result of the "democratization" of the constitutional order within a setting of responsible government would be indiscipline and anarchy have nowhere been realized. On the contrary, in almost all jurisdictions a new authority, the political party, non-legal in some, legally recognized in others, has been established against which unorganised popular opinion is powerless unless aided by the Fifth Estate. It is a study of those few jurisdictions which are not yet dominated by party politics, or in which party politics is either a recent or a weak phenomenon, which may be of assistance in studying the possible workings of responsible government in the Northwest Territories.

Before looking at those jurisdictions as individual cases there are two other general matters to be addressed: the history of elected executives and the general framework of Commonwealth constitutions and conventions in which non-party jurisdictions framed their own special provisions governing the Executive and its responsibility to the Legislature.

B. ELECTED EXECUTIVES AND GOVERNMENT BY COMMITTEE

Perhaps the outstanding feature of the Northwest Territories Executive to Canadian eyes is that its Members are elected by the Assembly. It is clearly a feature which poses some problems for the operation of responsible government. However, the general notion of electing the Members of the Executive Council and the Government Leader are not unprecedented, although the particular Territorial variant is, at least in a jurisdiction moving towards responsible government.

As will be seen, most of the British Pacific Islands Constitutions, starting with Western Samoa in 1962, contain the idea of electing the Chief Minister. This idea did not waft in on a Pacific breeze. As long ago as 1922 the Constitution of the Irish Free State, after vesting executive authority in the King, exercisable by His Representative, aided and advised by an Executive Council responsible to Dail Eireann (the Lower House) provided that the President of the Council should be appointed (it was careful not to say by whom) "on the nomination of Dail Eireann". The President was to nominate the remaining Executive Councillors and other Ministers "with the assent of Dail Eireann". This entailed a positive vote of confidence and not a choice of individual Ministers by the Dail. Article 53 provided that the President and the Ministers nominated by him should retire from office should the President cease to retain the support of a majority in Dail Eireann and further that the Parliament should not be dissolved on the advice of an Executive Council which had ceased to retain the support of a majority in Dail Eireann. This last provision was a direct negation of a basic element of responsible government, even though the Executive Council was, by Article 54, collectively responsible for all matters concerning the Departments of State administered by Members of the Executive Council. The Free State was part way to the fixed term concept.

When the Free State Constitution was amended in 1936 by gutting it of all reference to the King and His Representative, (a sort of 15/16th way house to the openly republican 1948 Constitution), the Executive Council was charged with the exercise of the executive authority and power in the government of the Free State. The President of the Council was made directly electable by Dail Eireann. The other Members of the Council were to be appointed by the President with the assent of Dail Eireann.

This, as will be seen, approaches the constitutional set up in the Republic of Kiribati whose Constitution dates from only 1978, although the Free State continued to retain the prohibition on dissolution by a defeated Ministry. Kiribati has adopted precisely the opposite solution: automatic dissolution when the Government falls.

The pre self-government Constitution of Jamaica (1944) provided for the election by the House of Representatives of the non-official Members of the Executive Council who were subject to "recall" by a two-thirds majority of the House. This provision was not carried forward into the self-government and independence Constitutions. There is, perhaps, an echo in the specific provision of Section 71(2) of the present Constitution:

> "(2) If the House of Representatives by resolution which has received the affirmative vote of a majority of all the members thereof has resolved that the appointment of the Prime Minister ought to be revoked, the Governor General shall, subject to the provisions of subsection (3) of this section, by instrument under the Broad Seal, revoke his appointment."

Subsection (3) provides an alternative to dismissal in these terms:

> "(3) If the House of Representatives has passed a resolution as provided by subsection (2) of this section that the appointment of the Prime Minister ought to be revoked, the Governor General shall consult with the Prime Minister and, if the Prime Minister within three days so requests, the Governor General shall dissolve Parliament instead of revoking the appointment."

It is still open to the House of Representatives to pass a traditional motion of want of confidence or for a Prime Minister to treat loss of a vote as a demonstration of want of confidence and to react in the traditional way.

Election of members to the Governor's or Executive Council was also practised in other parts of the West Indies and the Empire. As a further example, the Gilbert and Ellice Islands Order of 1967 provided for the Resident Commissioner to have a Governing Council composed of five members elected by the House of Representatives and up to five ex-officio and official members. The House of

Representatives was to designate one of the elected Members as Chief Elected Member. By 1970, however, as self-government approached, the Leader of Government Business was to be elected by the elected Members of the new Legislative Council, and the balance of the Executive Council was to be made up of five officials and four elected Members of the Legislative Council appointed by the Resident Commissioner after consultation with the Leader of Government Business. The primacy of the Government Leader was already being asserted. When a full Ministerial form of government was granted in 1974, the Ministry consisted of a Chief Minister elected by the Legislative Assembly, four to six Ministers appointed on the advice of the Chief Minister and three (later one) ex-officio Member.

In Papua New Guinea in the few years between the adoption of a representative form of government and independence, the House of Assembly appointed from among its Members a Ministerial Nominations Committee at the first meeting after a general election. In consultation with the Administrator the Committee appointed the Ministers who in turn appointed the Chief Minister from among their number. The independence Constitution vested the choice of the Prime Minister in the National Parliament. The Constitutional Planning Committee set up to draft an independence constitution considered retaining the older system, but felt that it had outlived its purposes and recommended the already established Pacific system of involving the Parliament as a whole in the selection of the Prime Minister only.

The reason the election by popular Assemblies of individual Members of Executive Councils or Cabinets was not carried forward into self-government and independence Constitutions drawn on the responsible government pattern is quite clear. It was only a transitional or bridging mechanism from representative to responsible government. In the last stage of purely colonial government there are a majority of unofficial and elected Members in the Legislative Council. The appointed Members are either officials or represent sections of the population that can not be (adequately) represented by elected Members. The unofficial Members on the Executive Council, whether appointed or elected by the Legislative Council (or Assembly) take part with the Governor in decisions on policy but they are in no sense Ministers responsible to the Council (or Assembly). They are simply a means by which the Governor keeps his executive government in touch with public opinion. What is needed is a

means by which the gap between representative and responsible government can be bridged. This stage is marked by devices to capture control of the Executive Council for the Assembly (or Council). Often in the past the means used was to make representative government fail so as to ensure the complete conferral of responsible government and independence. Thus budgets were rejected, civil lists attacked, legislation routinely defeated. The Chamber was made anarchic. In a sense, the Finance and Legislation Committees of the Northwest Territories Assembly are but means of capturing the executive on this older pattern. The traditional route of the colonial power has been to create a second House to take care of unprotected interests and to abandon the local executive to Members of the Executive Council who can control the representative House, with safeguards such as disallowance, reservation, divided lists of subjects - some under local control, some remaining under Imperial control (e.g. dyarchy under the Government of India Act, 1935 or associated state status) - and the reservation to the Crown's representative of areas where he may act in his own discretion or on his own deliberate judgment.

The bridging of the gap in recent years, especially in the Pacific, has been a quick process and achieved simply by handing the choice of the Premier over to the popular House, when it is in Session. It is then his business to find the Ministers, even in a House of Independents, who can secure supply and the passage of essential legislation. On occasion, in the past, bridging the gap between representative institutions and responsible government has been a prolonged business, mostly because of external factors such as war, or more pressing problems in London. An instructive example is that of Ceylon where the "interim" solution lasted from 1931 to 1947 because of the Second World War and the need to deal first with the far more pressing problems of the Indian Empire. Under the 1931 Constitution the Legislature elected an Executive Committee for each major area of administration, and the Chairman of each Committee. The Chairmen became the heads of each of those areas of administration. The Chairmen constituted a Board of Ministers. Over the Board, for "reserved areas", principally finance, was the State Council constituted by the Ministers and three officials. From 1942 there was a Leader of the State Council. The Leader, Mr. D.S. Senanayake set out to make the Board of Ministers function like a Cabinet. In 1946 full internal self-government was granted.

Sir Ivor Jennings, for many years constitutional adviser to the Ceylon Legislature, to Mr. Senanayake and to the Board of Ministers, concluded that the Board of Ministers and Committee system was not a success for the following reasons.*

1. It encouraged Members of the Legislature elected to the Chairmanship of Committees and hence to the Board of Ministers to take an excessive interest in the details of administration, particularly as they affected their own constituencies.

2. The Committees had influence in respect of appointments, transfers and promotions. Canvassing names and lobbying became the rule and there was some corruption.

3. Several government departments were made responsible to each Executive Committee. So long as all departments were responsible to the Colonial Secretary there had been administrative co-ordination. When the Executive Committees became responsible there was only political co-ordination between the departments responsible to each Committee, which meant that there was frequently no co-ordination at all, even as between those departments, and none over government as a whole.

4. The fact that every question of principle and many questions of detail had to be debated by seven politicians caused lengthy delays in the process of government.

5. There was little co-ordination between Executive Committees.

6. The appointment of each Committee Chairman as a Minister prevented the development of a common political philosophy and any sense of collective responsibility.

No doubt points 1 to 4 could have been overcome by tinkering with the system along the lines suggested by the Royal Commission on the West Indes, 1939**, but points 5 and 6 point up the difficulty inherent in forming an Executive from individuals independently chosen by their peers.

What was important about the Ceylonese system between 1931 and 1946 was that it was devised for a plural society split on communal lines in which a party system had not developed. Because there were no parties it was very difficult, and evidently proved impossible, to have a politically homogeneous

---

* Sir Ivor Jennings: "The Approach to Self-Government", Cambridge University Press, 1956, p. 195

** Committees to be advisory only and to have no say over appointments, transfers and promotions

Board of Ministers. Each Member tended to play a lone hand in competition with the others. But after full internal self-government was granted in 1946 the Ministers coalesced into a "United Party" behind Senanayake who had carried the negotiations with the British Government as Leader of the State Council. There was still no Loyal Opposition and the tragedy of Ceylon was that one did not develop. When Solomon Bandaranaike left the United Party because of his frustrated ambitions he reversed his approach to the communal question and created a "disloyal" Opposition based on Sinhalese nationalism and religion.

The reader will know if there are any lessons to be drawn from the Ceylonese experience beyond the difficulty of ensuring collective responsibility by a Ministry made up of Ministers each of whom owes his position to direct election by the Assembly.

The idea of the Executive as a Committee of the Legislature continues to hold attractions. It seems to accord with general notions of democracy. Certainly several prominent Whig or Liberal interpreters of the British Constitution in the 19th Century wrote of the Cabinet as a Committee, although Bagehot so qualified the statement as to rob it of much meaning. The Cabinet as Committee of the House of Commons did reflect to some extent the way in which Cabinets came into being during the years between the first and second Reform Bills when the Commons was in a fluid state during the transition from one system of managing it (the limited franchise, patronage, pocket boroughs, etc.) to another (the party system). But even then the Cabinet was in no sense representative of the Members of the House but of the several factions and groupings and of their prominent Members. Nor did the Cabinet have any hand in choosing its chief, whose job it was to stitch together a sufficient grouping of factions and prominent persons to enable the Queen's business to carry.

During the 20th Century some leading left-wing figures such as Professor Laski and F.W. Jowett (later Lord Chancellor) campaigned for a series of committees each chaired by the relevant Minister, pretty much after the Ceylonese scheme described above. Each Committee was to consider all legislative and administrative matters relating to its Department. The Committee would have power to control the Department and to initiate legislation. Jowett's proposals were strongly resisted by Ramsay MacDonald who held the view "that Cabinet co-ordination and control was the key of representative government".*

---

* Quoted Lord Morrison of Lambeth: "Government and Parliament - a Survey from the Inside", 3rd Edn., London, Oxford University Press, 1964, p. 169

MacDonald pointed out that all-party committees responsible for policy and administration would be productive of delay and tend to make Parliament a permanent coalition and blunt the force of any reforming government. This state of affairs may hold its own attractions.

Lloyd George was also taken by the idea of Committees in the 1930's but his ideas really seem to have amounted to no more than the Committee system finally adopted at Westminster in the 1979 Parliament. The inspiration for Lloyd George's schemes, as also Jowett's, was the committee system of English local government in which there were neither Ministers responsible to both Crown and Parliament nor anything like the same press of business or demands on the time of the leading actors. The principal objection lies, not in the inordinate time demands on Ministers, or the compromise of an Opposition whose Committee Members are won over by a persuasive Minister, but in the abrogation of Ministerial responsibility. If a Minister's responsibility were to be divided between responsibility to Parliament as a whole and to a Committee representing all shades of opinion in the Chamber, the result might well be less democratic because of the backstair's influence of the Committee Members and the exclusion of the Members of the Chamber not sitting on that Committee.

Whatever the merits may be thought to be in government by committee, whether by a Committee of the Legislature constituting the Executive, or by a series of Committees on particular subjects, government by committee has been eschewed in modern constitutional drafting. This can not be without significance. Jurisdiction after jurisdiction, with political parties and without, have avoided the committee model. Instead they have all, with one accord, on achieving self-government or independence, opted for responsible government by Ministers chosen by, and by a Ministry formed by, a Chief Minister, Prime Minister or Premier. And this has been the invariable rule even where the choice of that first Minister has been committed to the Legislature to be exercised by direct election.

C. THE EXECUTIVE AND CONFIDENCE IN MODERN COMMONWEALTH CONSTITUTIONS

There is not a constitution in the Commonwealth today, nor has there been one, which does not owe much to earlier and to contemporaneous constitutions. This has not been because constitutions were imposed - even in the middle of the 19th Century colonists largely wrote their own constitutions - but because local lawyers and politicians alike were familiar with, and largely comfortable with, the ideas of responsible government. The appeal of responsible government has spread beyond the Commonwealth and even into territories controlled by the United States.

In the 19th Century no special effort was made to give expression to the principles of responsible government in constitutions. Sometimes express provision was included that public officers were to be appointed by the Governor acting upon the advice of the Executive Council except in the case of the appointment of officers liable to retire from office on political grounds. As late as the Commonwealth of Australia Constitution Act, 1900 (Imperial) the only recognizable features of responsible government included were the royal monopoly on the financial initiative and a provision that no Minister should hold office for longer than three months without becoming a Senator or a Member of the House of Representatives.

When independence constitutions started to come in a spate from the late 1950's onwards a certain uniformity in them was noticeable. The basic tenets of responsible government, including some of the conventions relating to confidence, were included, and in some detail. There was a tendency to spell out even more of the details as time went on, even down to appointment of Opposition Leaders. Spelling out the actual conventions relating to confidence received something of a set back when the Privy Council in two appeals from Nigeria and Sarawak (Malaysia)* made it clear that once a convention was reduced to writing in a constitution, what was at issue was the meaning of the actual words used. Attempts to mitigate their effect, or to deny their plain meaning, by appeals to practice and custom of the British Constitution were futile.

---

* Adegbenro v. Akintola [1963] A.C., 614
Ningkan v. Government of Malaysia [1970] A.C., 379

When it came time to provide constitutions for jurisdictions which were quite small in terms of population, or in which the traditional and lengthy development from Crown Colony government to independence had been telescoped into a few years, or in which political parties were weak or non-existent, the emphasis was placed, not on reducing the conventions of the British Constitution to writing, but on setting down precise mechanisms which would secure an Executive responsible to and accountable to the Legislature even if some of the opportunities for demonstrating want of confidence in a British Government were ignored, or even foreclosed.

Independence and self-government constitutions, therefore, fall into two broad classes. In the first are to be found those which either assume the conventional principles of the British Constitution or which attempt to state many of them in precise terms. In the second are those which attempt to state not old rules or conventions, but particular means tailored to local circumstances to create a stable Executive coming from and forming part of the Legislature which both creates that Executive and may recall it. There are, of course, many variants in each class, and they do not follow any particular chronological pattern. The inspiration for the second group, at least insofar as the Legislature electing the Prime Minister is concerned, is the Constitution of Western Samoa which was drafted as long ago as 1961. The Constitution of the Northern Territory of Australia dates only from 1978 and is as silent about the principles of responsible government as is the Commonwealth of Australia Constitution.

Equally, a very recent Constitution (1983) that of St. Christopher-Nevis, a small jurisdiction, falls clearly into the first group, matching those of the other Commonwealth Caribbean countries which are all of that first type. In order to illustrate the point, I mention the main features of the St. Christopher-Nevis Constitution which are of concern to us. Executive authority is vested in Her Majesty and may be exercised on her behalf by a Governor General appointed by her. There is an Executive Council to aid and advise the Governor General in the executive government and the Council is collectively responsible to the National Assembly for the executive government. The Members of the Council, other than the Prime Minister, are appointed by the Governor General on the advice of the Prime Minister. The provisions governing the appointment and retention

of office by the Prime Minister are central. They are contained in Section 52 of the Constitution. By subsection 52(2) the Governor General is to appoint as Prime Minister the Representative (i.e. a popularly elected Member of the National Assembly) who appears to the Governor General "likely to command"* the support of the majority of the Representatives. If an appointment is necessary when Parliament is dissolved, the Governor General chooses a person who was a Representative immediately before the dissolution. Pursuant to subsection 52(6) the Governor General shall remove the Prime Minister if a resolution of no confidence in the Government is passed by the National Assembly and the Prime Minister does not within three days either resign from his office or advise the Governor General to dissolve the National Assembly (with which advice the Governor General must comply). Government change-overs after elections are governed by subsection 52(7):

> "If, at any time between the holding of a general election of Representatives and the first meeting of the National Assembly thereafter, the Governor General considers that in consequence of changes in membership of the Assembly resulting from that election the Prime Minister will not be able to command the support of the majority of the Representatives, the Governor General may remove the Prime Minister from office."

Of course he may wait and see if the Prime Minister will be sustained by the Assembly. And the Prime Minister may in any event choose to resign.

In exercising his functions under subsections (2), (5), (6) and (7) the Governor General acts on his own deliberate judgment which can not be litigated or called into question in judicial proceedings. Privative provisions such as these are very common and flow from the unhappy litigation over removals of Premiers in Sarawak and Nigeria. The draftsman has also plumped for a specific non-confidence vote as a triggering mechanism instead of the looser terminology relating to loss of confidence or support of the House in the earlier variants of the first group of constitutions.

All constitutions in this group are really predicated on the existence or emergence of party politics, with the generally well understood Westminster principles either being already in

---

* Another common variant is "appears to him best able to command"

practice or certain of adoption once a fully representative and responsible government is established. They are, therefore, not of immediate application to the position in the Northwest Territories, although, naturally, individual provisions may be worthy of consideration and instructive. A summary of appointing mechanisms is to be found in Sir William Dale's recent book, The Modern Commonwealth.* What should be noted about all those mechanisms is that it is the appointment of the Prime Minister which is central. Other Ministers stand or fall with him.

Far more useful for present purposes are the Constitutions of the Pacific territories. They were designed for societies in which representative institutions were of recent introduction, there were well established traditions of decision-making by groups (class, extended families, small tribes), there was a tradition of authority in chieftains or kings, responsible government and independence were to be granted in a short time frame and, perhaps most importantly, there were no political parties, or if they existed, they were very loosely organised and had no monopoly on the seats in the Legislatures. It is worthwhile to study these constitutions in some detail, observing first that Tonga and Fiji have constitutions of the first group. Tonga is a traditional centralised monarchy which for a century had British institutions (and even an Established Church) while a protectorate. It never had a colonial form of government. Fiji had a party system before independence and a strong desire for British institutions and symbols. A note on it is, nonetheless, included.

WESTERN SAMOA

Population: 160,000
Area of Island chain: 1,133 sq. miles

Western Samoa was a Mandate and then a Trusteeship Territory administered by New Zealand whose forces took the Islands from Germany during the Great War. Before German colonisation there were four royal houses which have maintained their prestige and influence to the present day. Society was, and is, well-organised around the extended family, the head of which has considerable authority. These family groupings are smaller than clans in the traditional sense. Only the heads of families have the vote. There was a long history of agitation for greater autonomy and independence from New Zealand. The population is Christian and overwhelmingly Protestant. A traditional style of life has been maintained in stark contrast to the appalling fate of American Samoa.

* Butterworths, London, 1984, pp. 114-115; 141-143

Independence was achieved on 1st January 1962. The Constitution, although approved by a plebiscite under U.N.O. auspices, was approved in the first instance by a Constitutional Convention composed of the four kings (one of whom was Chief Minister before independence), the members of the Legislative Assembly and a good number of notables. The Constitution was drafted carefully after the Westminster model to achieve responsible government with particular provisions to take care of local circumstances and the absence of political parties.

Two of the four kings became joint Heads of State for life, the survivor of them to be sole Head of State. He is still in office. After his death the Head of State will be elected by the Legislative Assembly for a five year term, with no limitation on number of terms. The Malaysian example of rotating the kingship among the Sultans was not adopted.

Executive authority is vested in the Head of State. The Constitution requires the Head of State to act on the advice of the Cabinet, the Prime Minister, or the appropriate Minister, as the case may be, unless the Constitution otherwise provides. Section 32 provides for a Cabinet of Ministers who shall have the general direction and control of the executive government and shall be collectively responsible therefor to Parliament. This provision is common to most Commonwealth Constitutions written since the 1950's. Pursuant to Section 32(2) the Head of State shall appoint as Prime Minister to preside over the Cabinet a Member of the Parliament "who commands" the confidence of a majority of the Members of Parliament. Other Ministers are appointed on the advice of the Prime Minister. If it is necessary to appoint a Prime Minister or a Minister while Parliament is dissolved, the appointment is to go to someone who was a Member of the last Parliament. The stipulation that the Member appointed Prime Minister must be one who commands confidence, and not one who the Governor General considers is "best able to" or "is likely to" command the confidence of the majority of the Members of Parliament means that a factual test has been created. The Head of State has no discretion. In practice, the fact is ascertained for him by a secret ballot of the Members, although this is not stipulated in the Constitution.

The tenure of the Prime Minister is governed by Section 33.

"(1) The appointment of the Prime Minister who is in office at the commencement of the first session of the Legislative Assembly following a dissolution thereof shall be terminated by the Head of State on the seventh day of that session if the Prime Minister has not sooner resigned.

(2) The appointment of the Prime Minister shall also be terminated by the Head of State

a) if the Prime Minister ceases to be a Member of Parliament for any reason other than the dissolution of the Legislative Assembly; or

b) if the Legislative Assembly passes a motion in express words of no confidence in the Cabinet or if the Cabinet is defeated on any question or issue which the Prime Minister has declared to be a question or issue of confidence

Provided that, if after the passing of such a motion or after that defeat, the Prime Minister so requests, the Head of State may dissolve the Legislative Assembly instead of terminating the appointment of the Prime Minister; or

c) if the Prime Minister resigns his office by writing under his hand addressed to the Head of State; or

d) if the Prime Minister absents himself without leave."

Other Ministers lose their offices if the appointment of a Prime Minister is terminated, or on the advice of the Prime Minister, and if they cease to be Members of Parliament otherwise than by a dissolution, resign in writing or are absent without leave.

The Executive Council consists of the Head of State plus the Cabinet. (This is the pattern throughout the Commonwealth except in Canada.) It meets at the discretion of the Head of State or the Prime Minister. If the Head of State approves a Cabinet decision it thereupon takes effect. If he does not approve it, or requests an amendment, the Cabinet must reconsider the decision, but if it reaffirms the original decision, it takes effect.

Section 33(1) was designed to take care of the absence of political parties. In a House of independents thrown up by a franchise restricted to heads of families, it was thought

necessary to allow the House to shew its preference and so determine the selection of Prime Ministers. The Prime Minister must, therefore, resign after an election and a fresh appointment must be made of a Member who actually commands the Parliament's confidence. It was generally believed at Independence that only a prince of one of the four royal houses could hope to enjoy the confidence of the Assembly.

The effect of Section 33(1) is effectively to force a Prime Minister in office to re-offer himself to the Assembly on what is really a vote of confidence. The machinery is that the vote is conducted by secret ballot. Sometimes two persons are nominated. Even if only one candidate is nominated, e.g. the outgoing Prime Minister, the secret ballot is held and could result in his not gaining majority approval.

As late as the general election of 1979 all candidates for election to the Parliament or Fono stood as independents. Only twenty-one of the forty-seven retiring Members retained their seats. After the 1976 general election the Prime Minister had lost the confidence of the House and had thereupon resigned from it. No "Leader of the Opposition" emerged. But in the 1979 Parliament the opponents of the Prime Minister, Tupuola, formed the Human Rights Protection Party from twenty-three of the forty-seven Assembly Members. The new Cabinet was drawn entirely from the twenty-four who had supported the Prime Minister on the ballot for the Prime Ministership. A second de facto party was thereby formed. One of the twenty-four became Speaker. Thus the friends of the Government and the now formalised Opposition had equal voting strength. There was no provision in the Constitution for an Opposition. (Many Commonwealth Constitutions provide for a Leader of the Opposition and his appointment by the Governor General.) Subsequently, the seats of one Opposition Member and three Government supporters were declared void for treating and bribery. Despite the Opposition majority the Government stayed in office (pending the bye-elections) and delayed the calling of Parliament's first working Session. The Head of State declined to consider a petition from the Human Rights Protection Party Members, that its Leader be appointed as Prime Minister, until after the bye-elections. The result of the bye-elections was to restore the original 23:23 position in the House after election of the Speaker. The Government of Tupuola nevertheless managed to carry on until Parliament was dissolved by effluxion of time.

The February 1982 general election was the first fought on party lines. The supporters of Tupuola campaigned as a group and were centrally organized and funded. There were actually three parties. A Labour Party had been formed and had gained a seat in a bye-election in 1980. Besides the "party" candidates there were a goodly number of Independents. The result was as follows:

11 supporters of Tupuola
22 Human Rights Protection Party
14 Independents

After much lobbying for support the Human Rights Protection Party under Kolone secured the support of two of the Independents. On Tupuola's resignation pursuant to Section 33(1), Kolone was elected Prime Minister by 24:23. A Human Rights Protection Party nominee became Speaker.

Late in June 1982 the Government lost its working majority when the Minister of Education was unseated for electoral offences. On September 17th, the Prime Minister was himself unseated, and was thereupon removed from office pursuant to Section 33(2)(a). The Head of State swore in Tupuola as Prime Minister and Tofilau Eti became Leader of the Human Rights Protection Party. (He had been offered a portfolio in Tupuola's new Government but had refused it.) The Human Rights Protection Party continued to claim, without success, and in face of the letter of the law, that Kolone's removal from office was unconstitutional. The Human Rights Protection Party won both bye-elections and the Tupuola Government fell in December 1982 when its budget proposals, designated a matter of confidence under Section 33(2), were defeated. Eti was then sworn in at the head of a Human Rights Protection Party administration despite the expressed preference of Malietoa Tanumafili II for a national coalition and an end to party politics. Kolone returned to the House at another bye-election in January 1983, thus giving the Human Rights Protection Party twenty-five supporters against Tupuola's ten supporters and twelve Independents.

A further election was held in February 1985 after which Eti was confirmed in office. The Human Rights Protection Party secured thirty-one Members to the sixteen who supported Tupuola, who called his grouping the Christian Democratic Party. Tupuola had succeeded his cousin as one of the four kings and was now known as Tupua Tamasese. Two other parties had contested the election but had gained no seats. No Independents were returned. A two party system had arrived, but was not to last.

In July 1985 Eti asked for a dissolution after weeks of parliamentary unrest following Kolone's decision to leave the Human Rights Protection Party and sit as an Independent, but twenty-seven of the forty-seven Members signed a petition to the Head of State nominating Kolone to succeed Eti as Prime Minister. A formal vote of no confidence in Eti's Government was moved by Kolone, seconded by Tupuola, but did not come to a vote for procedural reasons. The request for a dissolution was refused. Eti did not resign. On December 27th 1985 the Budget was rejected and Eti again requested a dissolution, which was again refused by the Head of State. Eti was removed from office. The Budget defeat was due to defections from Eti's Human Rights Protection Party by some who favoured Kolone as Leader. In January 1986 Kolone was elected Prime Minister and formed a coalition of twelve former Human Rights Protection Party Members and the fifteen Christian Democratic Party Members. Tupuola became Deputy Prime Minister.

Although the election of the Prime Minister by the Assembly is not expressly provided for in the Constitution, it has become an essential practice because of the requirement of resignation after a general election and the constitutional duty of the Head of State to appoint as Prime Minister someone having the confidence of the Assembly (or "Fono"), a question of fact not depending on words such as "likely to", or "best able to" or on the Head of State's own deliberate judgment. The election is conducted by secret ballot.

COOK ISLANDS

(Resident adult population c. 20,000)
(92 sq. miles)
(Fifteen Islands)

The elective principle for the choice of the political Head of the Executive first noted in the Irish Free State Constitution of 1922 (see page 23 above), and embodied in the Western Samoan Constitution under cover of the words "who commands" and the requirement of resignation of a Prime Minister after a general election, was carried into the 1965 Constitution of the Cook Islands* which accorded them full internal self-government in association with New Zealand which is responsible for their defence and foreign affairs.

* 14 Eliz II St. II, 1965, C. 2 (N.Z.)

In 1965 there had been no political parties, as in Western Samoa in 1962, and quite elaborate provisions were included to govern the selection of the Premier. As these provisions were later to cause much controversy and litigation, they are now quoted in full:-

THE EXECUTIVE GOVERNMENT OF THE COOK ISLANDS

12. **Executive authority**—(1) The executive authority of the Cook Islands shall be vested in Her Majesty the Queen in right of New Zealand.

(2) Subject to the provisions of this Constitution, the executive authority of the Cook Islands may be exercised on behalf of Her Majesty by the High Commissioner, either directly or through officers subordinate to him.

(3) Nothing in this Article shall prevent the Legislative Assembly from conferring functions on persons or authorities other than the High Commissioner.

Cabinet

13. **Cabinet**—(1) There shall be a Cabinet of Ministers, comprising the Premier of the Cook Islands (who shall preside over Cabinet) and not fewer than three nor more than five other Ministers, which shall have the general direction and control of the executive government of the Cook Islands, and shall be collectively responsible therefor to the Legislative Assembly.

(2) The Premier shall be appointed as follows:

(a) If the appointment is to be made while the Legislative Assembly is in session, the High Commissioner shall appoint as Premier a member of the Assembly who commands the confidence of a majority of the members of the Assembly:

(b) If the appointment is to be made while the Legislative Assembly is not in session, the High Commissioner shall appoint as Premier a member of the Assembly who in the opinion of the High Commissioner, acting in his discretion, is likely to command the confidence of a majority of the members of the Assembly:

(c) If the appointment is to be made after a dissolution of the Legislative Assembly and before the holding of the general election of the Assembly following that dissolution, the High Commissioner shall appoint as Premier a person who was a member of the Assembly immediately before that dissolution and who in the opinion of the High Commissioner, acting in his discretion, is likely to command the confidence of a majority of the persons who were members of the Assembly immediately before that dissolution:

Provided that where the Legislative Assembly has been dissolved pursuant to subclause (2) of Article 37 hereof, the High Commissioner shall appoint as Premier a person who was a member of the Assembly immediately before that dissolution and who in the opinion of the High Commissioner, acting in his discretion, is capable of performing the functions of the Premier.

(3) The Ministers other than the Premier shall be appointed by the High Commissioner on the advice of the Premier. No person shall be so appointed unless—

(a) He is a member of the Legislative Assembly; or

(b) If the appointment is to be made after a dissolution of the Legislative Assembly and before the holding of the general election of the Assembly following that dissolution, he was a member of the Assembly immediately before that dissolution; or

(c) If the appointment is to be made after the holding of a general election of the Legislative Assembly and before the commencement of the first session of the Assembly following that election, he was elected as a member of the Assembly at that election.

(4) Appointments under the provisions of this Article shall be made by instrument under the Seal of the Cook Islands.

(5) If any employee of the Cook Islands Public Service is appointed to be a Minister, he shall forthwith be deemed to have vacated his office as an employee of that Service.

14. **Duration of office of members of Cabinet**—(1) The appointment of the Premier who is in office immediately before the date of the holding of a general election of the Legislative Assembly may be terminated by the High Commissioner, acting in his discretion, after the date of the holding of that election and before the date of the commencement of the first session of the Assembly following that election.

(2) The appointment of the Premier who is in office at the commencement of the first session of the Legislative Assembly following a general election thereof shall be terminated by the High Commissioner on the seventh day of that session if the Premier has not sooner resigned.

(3) The appointment of the Premier shall also be terminated by the High Commissioner—

(a) If the Premier ceases to be a member of the Legislative Assembly for any reason other than the dissolution of the Assembly; or

(b) If the Legislative Assembly passes a motion in express words of no confidence in Cabinet or if Cabinet is defeated on any question or issue which the Premier has declared to be a question or issue of confidence:

Provided that, if after the passing of such a motion or after that defeat the Premier so requests, the High Commissioner, acting in his discretion, may dissolve the Legislative Assembly instead of terminating the appointment of the Premier; or

(c) If the Premier resigns his office by writing under his hand delivered to the High Commissioner; or

(d) If the Premier is absent from the Cook Islands, otherwise than on official business, for a period of more than three months without written authority given by the High Commissioner, acting in his discretion.

(4) The office of any other Minister shall become vacant—

(a) If the appointment of the Premier has been terminated under the provisions of subclause (1) or subclause (2) or subclause (3) of this Article; or

(b) If the appointment of the Minister to that office is revoked by the High Commissioner, acting on the advice of the Premier, by instrument under the Seal of the Cook Islands; or

(c) If the Minister ceases to be a member of the Legislative Assembly for any reason other than the dissolution of the Assembly; or

(d) If the Minister resigns his office by writing under his hand

(5) Whenever, by reason of illness or of absence from the Cook Islands, the Premier is temporarily prevented from performing in the Cook Islands, the functions of his office, the High Commissioner may, by instrument under the Seal of the Cook Islands, appoint another Minister to perform those functions until such time as the Premier is capable of again performing them or has vacated his office.

(6) The power conferred on the High Commissioner under the provisions of subclause (5) of this Article shall be exercised by the High Commissioner, acting in his discretion, if in his opinion it is impracticable to obtain the advice of the Premier by reason of the illness or absence of the Premier, and, in any other case, shall be exercised by the High Commissioner, acting on the advice of the Premier.

(7) The High Commissioner, acting on the advice of the Premier, may, by instrument under the Seal of the Cook Islands,—

(a) Declare a Minister to be by reason of illness temporarily incapable of performing his functions as a Minister; or

(b) Suspend a Minister during the period of any investigation or inquiry into the conduct of that Minister.

(8) Any Minister in respect of whom action has been taken under the provisions of subclause (7) of this Article shall not perform any of the functions of his office or sit in or otherwise take part in the proceedings of Cabinet or of the Executive Council until the High Commissioner, acting on the advice of the Premier, has revoked the aforesaid instrument under the Seal of the Cook Islands.

18. Assignment of responsibilities to Ministers—(1) The Premier may, by direction in writing under his hand,—

(a) Charge any Minister with the responsibility for any Department or subject; and

(b) Revoke or vary any direction given under the provisions of this subclause.

(2) The Premier may retain in his charge any Department or subject.

37. Prorogation and dissolution of Legislative Assembly—(1) The High Commissioner may at any time, by notice published in the *Cook Islands Gazette*, prorogue the Legislative Assembly.

(2) If at any time the office of Premier is vacant, the High Commissioner shall, by notice published in the *Cook Islands Gazette*, dissolve the Legislative Assembly as soon as he is satisfied, acting in his discretion, that a reasonable period has elapsed since that office was last vacated and that there is no member of the Assembly who commands the confidence of a majority of the members.

(3) The High Commissioner may at any time, by notice published in the *Cook Islands Gazette*, dissolve the Legislative Assembly if he is advised by the Premier to do so, but shall not be obliged to act in this respect in accordance with the advice of the Premier unless the High Commissioner is satisfied, acting in his discretion, that in tendering that advice the Premier commands the confidence of a majority of the members of the Assembly.

(4) The High Commissioner shall dissolve the Legislative Assembly at the expiration of three years from the date of the last preceding general election, if it has not been sooner dissolved.

Shortly after self-government the Premier, Sir Albert Henry, formed the Cook Islands Party. He and his supporters won all general elections from 1965 to 1978. By 1978 Independents had disappeared from the Legislative Assembly. The seats not held by the Cook Islands Party were held by the Democratic Party. At the March 1978 election the Cook Islands Party won fifteen out of twenty-two seats and Sir Albert was confirmed as Premier by the Legislative Assembly after resigning pursuant to Section 14(1) of the Constitution. In July 1978 eight Members of the Cook Islands Party, including Sir Albert, were unseated for election irregularities by the Supreme Court and the results in their seats overturned, the Democratic Party candidates being declared elected. Sir Albert was dismissed and a new Government of the Democratic Party led by Dr. Thomas Davis was installed. The background to this turn of events was this. At the December 1974 general

election the Cook Islands Party had won fourteen seats to eight for the Democratic Party. The 1978 election came some nine months early following the resignation of three Ministers in protest against Sir Albert Henry's increasing nepotism and authoritarianism. By 1978 there were as many adult Cook Islanders resident in New Zealand as in the Islands. Expatriate voting was permitted but had been insignificant before 1974. For the 1978 election both the Cook Islands Party and the Democratic Party set out to organize and get in the expatriate vote. The 1978 election was further complicated by the appearance of the Unity Movement on a platform of opposition to party politics. At the counting of the vote the Democratic Party led in a majority of electorates until the expatriate vote came in. Sir Albert had been more successful by flying in expatriate voters at $20. per head with voting instructions. The money for this expensive garnering of votes was arranged by fiddling the philatelic sales account through which money was processed. The Democratic Party had also chartered planes to bring in expatriate voters but had charged the cost of transportation and had not issued voting instructions.

Since October 1975 the Chief Justice, Sir Gaven Donne, had been the Queen's Representative in the Islands. Immediately after giving his ruling on the election petitions, he prorogued the Legislative Assembly pending appointment of a new Government. Dr. Davis was sworn in after the Chief Justice had dismissed Sir Albert under Section 14(3)(a) of the Constitution. Sir Albert was succeeded as Leader of the Opposition by his cousin Mr. Geoffrey Henry. Both were charged with fraud, misappropriation of public funds and bribery. In August 1979 Sir Albert pleaded guilty, was fined and put on three years probation on terms which included not standing for the Legislative Assembly. This condition would have prevented him from contesting the next general election but was overturned on appeal by three judges of the Supreme Court of New Zealand sitting as the Cook Islands Court of Appeal. In April 1980 Sir Albert was stripped of his knighthood by the Queen.

For the next general election in March 1983 a special overseas constituency for expatriate voters was created. The election returned thirteen Cook Island Party and eleven Democratic Party Members. Sir Thomas Davis (as he had now become), who had himself been defeated, resigned without meeting Parliament and the Queen's Representative commissioned Mr. Geoffrey Henry pursuant to Section 13(2)(b) and the proviso to Section 13(2)(c) of the Constitution. On taking office Mr. Henry had advised

Sir Gaven that Section 14(2) of the Constitution was no longer operable. It had been inserted to cater for a Legislature in which there were only Independent Members but the existence of working party majorities had made it redundant. The Law Officers advised the Queen's Representative otherwise. The Prime Minister advised the Queen's Representative to seek an advisory opinion. As this would have entailed Sir Gaven in seeking an advisory opinion from himself, he removed the hearing, as fortunately he was permitted to do under the Judicature Act, to the Court of Appeal constituted by Sir Graham Speight, the Chief Justice of New Zealand, and two other judges of the New Zealand Supreme Court. Their opinion was delivered in two parts on 29th July and 1st August 1983 to the effect that Section 14(2) was plain, unambiguous and to be complied with. On 2nd August, the seventh sitting day of the Session Mr. Henry resigned, as he had undertaken to do if the advisory opinion went against him.

Even before the opinion was delivered by the Court of Appeal Mr. Geoffrey Henry had lost his majority by the death of one supporter and the defection of Mr. Tupui Henry (son of Albert) who had been a rival of Geoffrey for leadership of the Cook Islands Party. Having received Mr. Tupui Henry into its ranks the Democratic Party stated its preference for a coalition government headed by him.

On Mr. Geoffrey Henry's resignation no majority emerged in support of a new Premier. The written Constitution provided no solution. Sir Gaven was obliged to assume full executive powers. On 14th August he issued what amounted to an ultimatum that if a solution were not reached he would dissolve. No solution was reached on delaying the leadership issue until after the two coming bye-elections (there had been a second death.) Accordingly, on 17th August Sir Gaven dissolved and appointed Mr. Geoffrey Henry Premier under the proviso to Section 13(2)(c). He purported to limit the new Government to caretaken powers pending the general election, although it is not apparent where his authority to do so came from. The elections were held on 2nd November and returned thirteen Democratic Party and eleven Cook Islands Party Members. Sir Thomas Davis was returned and became Premier again on 16th November.

The events of 1983 provide a striking illustration of the difficulties and dangers of putting (almost) everything into a written Constitution and of the necessity of a reserve power in the Crown to solve an otherwise insoluble problem.

On 4th August 1984 Sir Thomas reconstructed the Government by including three members of the Opposition Cook Islands Party, including Mr. Geoffrey Henry. In June 1985 a motion of no confidence was moved by a Cook Islands Party Member, but was withdrawn when Mr. Geoffrey Henry ensured most Cook Islands Party Members would not vote for it. Nevertheless he and the two other Members withdrew from the Cabinet. Four backbench Cook Islands Party Members continued to support the Government until September 1985 when they were threatened with expulsion from the Party if they persisted in their support of the Davis Government.

It is worthwhile looking into the advisory opinion of the Cook Islands Court of Appeal* because it covers so much of the evolution in constitution making in the modern Commonwealth. The questions asked on the Reference were as follows:-

> (1) Is the Queen's Representative required by Article 14(2) to terminate the appointment of the Prime Minister, the Hon. G. A. Henry, within 7 days as therein prescribed, if the Prime Minister has not earlier resigned?
> (2) If the answer to Question (1) is "Yes", then for the purposes of the appointment contemplated by Article 13(2)(a), is a vote required to be taken in Parliament expressing confidence in the Prime Minister?
> (3) If the answer to Question (2) is "Yes", is the majority to be fixed by –
> (a) the majority of the members present (Article 34(2)),
> (b) the majority of members elected,
> (c) or the majority of the total membership including vacancies?
> (4) In the event of a tied vote of confidence does the "person presiding" (Article 34(3)) have a casting vote?

The texts of the Sections of the Constitution principally considered by the Court were these:-

> "13. *Cabinet*
> (2) The Prime Minister shall be appointed as follows:
> (a) If the appointment is to be made while Parliament is in session, the Queen's Representative shall appoint as Prime Minister a member of the Parliament who commands the confidence of a majority of the members of the Parliament:
> (b) If the appointment is to be made while the Parliament is not in session, the Queen's Representative shall appoint as Prime Minister a member of the Parliament who in the

---

* Reference by the Queen's Representative, [1985] LRC (Const), 56

opinion of the Queen's Representative, acting in his discretion, is likely to command the confidence of a majority of the members of the Parliament:

(c) If the appointment is to be made after a dissolution of the Parliament and before the holding of the general election of the Parliament following that dissolution, the Queen's Representative shall appoint as Prime Minister a person who was a member of the Parliament immediately before that dissolution and who in the opinion of the Queen's Representative, acting in his discretion, is likely to command the confidence of a majority of the persons who were members of the Parliament immediately before that dissolution:

Provided that where the Parliament has been dissolved pursuant to subclause (2) of Article 37 hereof, the Queen's Representative shall appoint as Prime Minister a person who was a member of the Parliament immediately before that dissolution and who in the opinion of the Queen's Representative, acting in his discretion, is capable of performing the functions of the Prime Minister.

14. *Duration of office of members of Cabinet*

(1) The appointment of the Prime Minister who is in office immediately before the date of the holding of a general election of the Parliament may be terminated by the Queen's Representative, acting in his discretion, after the date of the holding of that election and before the date of the commencement of the first session of the Parliament following that election.

(2) The appointment of the Prime Minister who is in office at the commencement of the first session of the Parliament following a general election thereof shall be terminated by the Queen's Representative on the seventh day of that session if the Prime Minister has not sooner resigned.

(3) The appointment of the Prime Minister shall also be terminated by the Queen's Representative –

(a) If the Prime Minister ceases to be a member of the Parliament for any reason other than the dissolution of the Parliament; or

(b) If the Parliament passes a motion in express words of no confidence in Cabinet or if Cabinet is defeated on any question or issue which the Prime Minister has declared to be a question or issue of confidence:

Provided that, if after the passing of such a motion or after that defeat the Prime Minister so requests, the Queen's Representative, acting in his discretion, may dissolve the Parliament instead of terminating the appointment of the Prime Minister; or

(c) If the Prime Minister resigns his office by writing under his hand delivered to the Queen's Representative; or

(d) If the Prime Minister is absent from the Cook Islands, otherwise than on official business, for a period of more than 3 months without written authority given by the Queen's Representative, acting in his discretion."

The Court held that Section 14(2) required the Queen's Representative to terminate the Prime Minister's appointment if he had not resigned within seven days of the opening of the first Session of the new Parliament. In the absence of ambiguity, Section 14(2) should be given its plain meaning in its context, curbing any tendency to give a mechanical or pedantic interpretation to it. Section 14(2) should be considered in the context of the Constitution as a whole after reference to the legislative

history of the Constitution, including the Report of the Constitutional Advisers, and the fact that recent Pacific Islands Constitutions reflect a broad acceptance of the principle that Parliament is to have the central role in selecting the Prime Minister.

The subsidiary but also critical, issue and the first in chronological order, was whether the selection of the Prime Minister was to follow a vote in the Assembly. The Court advised that it should be by a formal vote of a majority of Members of Parliament at a formal meeting called by the Queen's Representative and presided over by a person chosen by him, and not the Speaker, to avoid the possibility of a casting vote by the Speaker. At first the Court advised that the meeting should be of the Assembly presided over by the Speaker. But on further argument it became apparent that a person not a Member of the Assembly had been elected Speaker, as was permitted under the Constitution. In the event of a tied vote the Speaker would have a casting vote and a non-Member would be making the final decision on who should be Prime Minister. So, in Northwest Territories terms, the decision was committed to a caucus of the Assembly Members presided over by a person appointed by the Queen's Representative.

The Court reached its conclusion for the basic reason that Section 13(2)(a) required the Queen's Representative to appoint as Prime Minister a Member of Parliament "who commands the confidence of a majority of the members of the Parliament."

These words refer to a situation of fact and neither require nor permit the Queen's Representative to exercise any judgment or discretion. Neither do they leave any room for advice. The general statement in Section 5 that the Queen's Representative is to act on the advice of the Cabinet, Prime Minister or the appropriate Minister except as otherwise provided in the Constitution has no application since there is no Cabinet, no Prime Minister and no Ministers in office at the moment of new appointment to the Prime Minister's office when the House is in Session. The Court concluded: "It is a person who actually commands that confidence who shall be appointed and not someone who the Queen's Representative judges or is advised is likely to. That actual command would be evidenced by a vote of confidence in the candidate or some other unequivocal act of the Legislature endorsing the candidate". The reliance by the Court on the words

of Section 13(2)(a) as imposing as a condition, a state of fact, was well based in the earlier decision in Ningkan v. Tun Abang Haji Openg, Governor of Sarawak.* There the words: "If the Chief Minister ceases to command the confidence of a majority of the Members of the Council Negri ..." were construed as denying to the Governor any power to dismiss the Chief Minister on the basis of the parliamentary situation without an adverse vote in the Parliament. The opposite conclusion was reached in Adegbenro v. Akintola**where the matter in issue was dismissal of the Premier of Western Nigeria by the Governor on receipt of a letter from a majority of the Members of the Assembly telling him they had no confidence in the Premier. The Constitution gave the Governor the power of dismissal if "it appears to him that the Premier no longer commands the support of a majority of the Members of the House of Assembly." The Governor did not have to wait for an adverse vote.

In contrast is the situation when the Prime Ministership falls vacant when Parliament is not in Session - it can only be summoned on advice - or is dissolved. In these two circumstances there can be no contemporaneous parliamentary approval of the Prime Minister appointed. The Constitution in Section 13(2)(b) and (c) reflects this in empowering the Queen's Representative to appoint a Member who

(i) - in the opinion of the Queen's Representative
(ii) acting in his discretion
(iii) is likely to command the confidence of the Members of Parliament.

The Queen's Representative has to make his own best estimate. If the party situation does not make his task simple "he will have to draw on his own good sense and political sensitivity and that of the other main actors" pending Parliament's meeting. Parliament is given the opportunity to resolve the question once it meets, by a fresh opportunity to choose the Prime Minister "in keeping with the reality that it, and not the Queen's Representative, appoints the Prime Minister if there is a vacancy".

It was argued in opposition to these principles that the Constitution was framed on the Westminster model which does not know a vote of confidence in the Prime Minister alone. The Court rejected this approach, from which it would be inferred that the Prime Minister once appointed should retain office, without any

---

* Ningkan v. Tun Abang Haji Openg (1966) 2 M.L.J. 187, 193; (1966) 8 Malaya L.R. 283: Confirmed Ningkan v. Govt. of Malaysia [1970] A.C. 379

** [1963] A.C. 614

formal parliamentary endorsement, until the Ministry is defeated in a situation in which it was obliged to or chose to resign if it did not obtain a dissolution. The Court applied the now standard principle set out by Lord Radcliffe in delivering the advice of the Privy Council on a similar argument in the Nigerian case of Adegbenro v. Akintola*. After noting that the then Nigerian Constitution had been drawn on the Westminster pattern the Board said:

> "But, accepting that, it must be remembered that, as Lord Bryce once said, the British Constitution 'works by a body of understandings which no writer can formulate'; whereas the Constitution of Western Nigeria is now contained in a written instrument in which it has been sought to formulate with precision the powers and duties of the various agencies that it holds in balance. That instrument now stands in its own right; and, while it may well be useful on occasions to draw on British practice or doctrine in interpreting a doubtful phrase whose origin can be traced . . . ., it is in the end the wording of the Constitution itself that is to be interpreted and applied, and this wording can never be overridden by the extraneous principles of other Constitutions which are not explicitly incorporated in the formulae that have been chosen as the frame of this Constitution."

That case continues to stand as a warning that once one begins to write down constitutional principles in a governing document one is bound by the letter of the law. Any lacunae in the document may cause serious difficulties. So here, since the Cook Islands Constitution did not state explicitly how command of confidence by the Prime Minister was to be shewn, the Court could not state that it must be expressed in terms of a vote of confidence in the traditional sense. It might better be a vote expressing the confidence of a majority of the Members of the Assembly. In any event, the Court could not be called on to pass judgment on the exact procedure used ex post facto because of Section 36(1) of the Constitution which provides that:

> "The validity of any proceedings in the Legislative Assembly or in any committee thereof shall not be questioned in any Court."

The Court also had to consider arguments designed to shew that Section 14(2) requiring a Prime Minister to resign within seven days of the opening of the first Session of a new Parliament only applied to a "hold-over Prime Minister" whose appointment had not been terminated under Section 14(1). The Court had no real difficulty in rejecting this argument. It ran counter to the plain meaning of Section 14(2) which could only

---

* [1963] A.C. 614, 631-2

be made ambiguous by a strained interpretation of its context. The words "Prime Minister" in that subsection were not limited by the obvious meaning of the same words in Section 14(1) which was confined to a Prime Minister holding over from before an election. The context could not be limited to Section 14. It must be drawn from the whole Constitution. In any event, the order of subsections in Section 14 need not be seen as consequential or limiting but rather as simply chronological.

The Court noted that the hold-over Prime Minister did resign and was re-appointed early in the first Session following the 1968 and 1972 elections, when there were no real parties, as there were none when the Constitution was drafted. Since this was common ground the Court took note of it, as also of the fact that there were now two parties in the House. Should that change affect the interpretation of the Constitution? Counsel for Mr. Henry sought to rely on the approach of the Privy Council in James v. The Commonwealth of Australia.*

> "The words used (in a Constitution) are necessarily general and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the vicissitudes of fact which from time to time emerge. It is not that the meaning of the words change, but the changing circumstances illustrate and illuminate the full import of the meaning."

But, the Court said,

> "Our case is not, however, one involving general language which can be interpreted to accommodate the new situation. Rather Article 14(2) would have to be adapted to exclude from its scope the leader of a party which has a majority of members in Parliament. That is not interpretation but amendment. A similar adaptation might equally have to be made to Article 13(2)(a) by restricting the members entitled to vote.** It would also be illegitimate."

The Court noted that constitutional amendment was not difficult and had been employed fairly extensively but had never been undertaken to implement changes thought necessary by the rise of the party system.

---

* (1936) 55 C.L.R. 1 at p. 43

** The limitation the Court had in mind would appear to have been limiting the vote to members of the majority party: the Australian and New Zealand caucus system.

The Court identified three broad features of the constitutional provisions it was interpreting.

1. The draftsman had attempted to spell out in some detail the powers, principles and procedures which in other systems, such as those of the United Kingdom and New Zealand, are left to practice. The process of explication itself introduced changes from the traditional "Westminster" system.

2. The process also involved some deliberate changes in the substantive rules. It could not be assumed that the traditional models had been carried over without changes. Thus, the powers of the Queen's Representative, as set out in Section 13, are narrower in several respects than those of the Queen or her Governors General in at least some now codified systems (such as in the West Indes). However it be interpreted, Section 14(2) incorporates a rule not found in the United Kingdom or in most Commonwealth countries. "As the powers of the Queen's Representative are narrower, so the powers of the Parliament are wider."

3. It is the Parliament that in reality chooses the Prime Minister. The power of the Queen's Representative is a temporary and limited one. "If he makes an appointment after the election and before the Parliament meets or if he leaves the hold-over Prime Minister in office, Parliament must confirm that decision or in effect choose a new Prime Minister. (If it cannot, the matter goes back to the electorate). If Parliament is sitting when an appointment is to be made, it in effect makes it. And if the Queen's Representative makes an appointment after the Parliament is dissolved then the electorate will soon have the opportunity to rule, and the cycle begins again."

The Court referred to the drafting history of the Constitution having noted that the Western Samoa Court of Appeal had done likewise in Attorney General v. Saipa'ia Olomalu (26 August 1982, unreported).

In a Report to the Members of the Legislative Assembly of the Cook Islands on Constitutional Development presented in September 1963, Professor C.C. Aikman, Professor J.W. Davidson

and Mr. J.B. Wright dealt with the Selection of the Premier and Other Ministers in the following way:

> "The absence of a party system at present in the Cook Islands raises a problem in regard to the selection of the Premier . . . and of other Ministers. We believe that the solution adopted in Western Samoa, in similar circumstances, is the most suitable one. After each general election, and on any other occasion in which the position of Premier might have become vacant (for example, through resignation or death), the Assembly would consider which of its members should be nominated for the position. If more than one member were nominated, a ballot (or succession of ballots) would be held to ascertain the wishes of the majority of members (para. 14)."

The summary of recommendations, if anything is even clearer:

> "The Premier should be elected by the Assembly ..."
> (p. 31, para. 3)

The Court continued:

> We take Mr. Mathieson's point that there are many steps between the making of such proposals and the final adoption of the constitution. In this case however the Cook Islands Legislative Assembly adopted this proposal, using the wording in the summary and in our view the texts of Articles 13 and 14 are completely consistent with it. This material as a whole provides a clear answer to this question whether the general election effectively decides who shall be the Prime Minister or whether it is only the first of two steps, the second to be taken in Parliament. The answer, in law, is that it is only the first step of two. In the party situation is clear it will of course be the decisive one in fact.
>
> The extract just quoted and counsel in argument referred to related provisions in other constitutions. They help confirm that Parliament has the central role in selecting the Prime Minister. Most significant of them is that which offered the model for the Cook Islands Constitution – Articles 32(2)(a) and 33(1) of the Western Samoan Constitution are in very close terms to Articles 13(2)(a) and 14(2):
>
> > "The Head of State shall apoint as Prime Minister . . . a Member of Parliament who commands the confidence of a majority of the Members of Parliament.
> >
> > . . . . . .
> >
> > The appointment of the Prime Minister who is in office at the commencement of the first session of the Legislative Assembly following a dissolution thereof shall be terminated by the Head of State on the seventh day of that session if the Prime Minister has not sooner resigned."
>
> The Constitutional Adviser to the Samoan Legislative Assembly has recorded that the provisions in the draft 1959 bill which is the direct predecessor to the first of the above clauses provided for the appointment as Prime Minister of a Member "who is likely to command the confidence . . .". The (Samoan) Working Committee on Self Government requested that this be changed to read "who commands the confidence . . .". He notes "this amendment, which was accepted by New Zealand, was intended to ensure that no appointment would be made until the Legislative Assembly had considerd the matter and submitted a nomination" (J. W. Davidson, *Samoa Mo Samoa* (1967) 363 note; Professor Aikman was at this time the New Zealand Government's adviser on Samoan Constitutional development, and he and Professor Davidson with Mr. Wright of course prepared the Cook Islands report quoted above. The 1959 provision was enacted as the Samoa Amendment Act 1959, section 13). The Assembly twice nominated a Prime Minister under the 1959 Act: following its enactment and in 1961 after the general election. "Samoa Comes of Age: The Development of Independence" (September 1961) *Round Table* 347, 357.

The Court also noted that "(m)ore recent Pacific Island constitutions similarly and more strongly emphasise the role of Parliament in the election of the Prime Minister or the President: Nauru, Constitution 1968, Articles 16 and 24, Papua New Guinea, Constitution 1975, sections 142 and 145, Tuvalu, Constituion, (U.K.) S.I. 1975, No. 3781, sections 32 and 33 and Annex I, Solomon Islands, Constitution, (U.K.) S.I. 1978, No. 783, sections 33 and 34 and Schedule I, Kiribati, Constitution, (U.K.) S.I. 1979, No. 719, sections 30-38, and Vanuatu, Constitution 1980, Article 39 and Schedule 2; compare section 73(2) and the provisos to section 70(1) of the Constitution of Fiji, 1970, (U.K.) S.I. No. 6630, but note the constraints on the power of the Governor-General; section 74(1) and (2). These constitutions are all later in date than that of the Cook Islands. Their relevance is the less on that account. But we do not think that they should be totally ignored. They suggest that there is a broad acceptance amongst Pacific Constitution makers, running back to the first modern constitution (that of Western Samoa) and forward through the Cook Islands one, that Parliament is to have the central role in selecting the Prime Minister."

It is fortunate that the later Constitutions of the Solomon Islands and Tuvalu provided in detail for the machinery for the election of a Prime Minister. The problems facing the Cook Islands Appeal Court in suggesting a machinery to the Queen's Representative, and in a sense legislating, will be avoided. The advice as to the machinery the Queen's Representative should set in motion in order to ascertain the will of the Assembly as to who the Prime Minister should be caused the Court the greatest difficulty. It had to fill a gap in the Constitution and, as has been noted, it had to change its advice on this point after re-opening the case and hearing further argument.

The final answers of the Court on the Reference ran as follows:-

QUESTION (1): Is the Queen's Representative required by Article 14(2) to terminate the appointment of the Prime Minister, the Hon. G A Henry, within 7 days as therein prescribed if the Prime Minister has not earlier resigned?

ANSWER: Yes.

QUESTION (2): If the answer to Question (1) is "Yes", then for the purposes of the appointment contemplated by Article 13(2)(a), is a vote required to be taken in Parliament expressing confidence in the Prime Minister?

"A vote must express majority support for a member given by members only. Insofar as Question 2 implies a vote in Parliament assembled, in accordance with Standing Orders, and insofar as Article 34(3) would appear to give a casting vote to a non-member which vote, if cast, would have to be ignored by the Queen's Representative, it now appears invidious in the circumstances to use the technical procedures of Parliament duly assembled. It must be left to the Queen's Representative to determine how he ascertains the matters required under Article 13(2)(a). But our recommendation is that he should call for a formal meeting of all members of Parliament at some appropriate place, possibly within the precinct of the House building, or elsewhere, presided over by such person as he decides, meeting as often as is necessary and following such procedures as he may from time to time direct, to ascertain what member, if any, commands the confidence of the majority of the members of Parliament."

QUESTION (3): If the answer to Question (2) is "Yes", is the majority to be fixed by –

(a) the majority of the members present, (article 34(2));
(b) the majority of members elected;
(c) or the majority of the total membership including vacancies?

"The view of the majority of elected members as is suggested in Question 3(b) is the appropriate method of ascertainment. Question 4 now has no application

PAPUA NEW GUINEA

Eastern half of the Island of New Guinea and northern part of the Solomons Archipelago
182,700 sq. miles
Population: approximately 3,100,000

Papua New Guinea has the most elaborate Constitution in the British Commonwealth. It includes a very extensive and complex web of guaranteed and qualified rights together with a Leadership Code which has become the model for all later Pacific Constitutions. (The Leadership Code is a very grand set of rules dealing with real or apparent conflict of interest.) That it has worked well may owe something to the detail, but probably more to the will of the political leaders and the absence of dominant parties. It places considerable emphasis on assuring a Government, once in office, a degree of security even though its legislation be mauled or rejected.

The Constitution was not drafted in the usual way, but by a combination of local leaders and a large, and rather motley, collection of overseas experts covering a far wider span of views and approaches than has been usual in the drafting of Commonwealth Constitutions. (The Canadian delegates were Dr. Watts, Principal of Queen's University, Kingston, Ontario and Professor W.R. Lederman, formerly Dean of Law at the same University.) The Constitutional Planning Committee produced a draft and options which were not swallowed whole by the pre-independence House of Assembly. Some of the more bizarre features of the draft (such as a state without a Head of State) were eliminated. The final form was settled at a Constituent Assembly in August 1975.

The highlights of the Constitution, for present purposes, are these:-

1. The Constitution is autocthonous, an option not open to the Northwest Territories.

2. There is a unicameral Legislature composed of Members from single-Member open electorates and single-Member provincial electorates and three "nominated" Members elected by a two-thirds vote of the elected Members.

3. The draft of the Constitution, the report of the Constitutional Planning Committee, the debates in the Constituent Assembly, and the travaux preparatoire may be used as aids to interpretation of the Constitution.

4. The Queen, by express request of the Constituent Assembly and her consent, is Head of State. The succession is settled by reference to Her heirs and successors in the sovereignty of the United Kingdom. Even a Regency is provided for in the event of youth or incapacity of the Sovereign. There is a Governor General who may act for the Queen. However, the Constitution is quite logical in expressing itself in terms of the Head of State throughout, except in the provisions dealing with the Governor General's appointment and tenure. The Constitution simply declares that the functions of the Head of State may be performed "through a Governor-General".

5. The Head of State is to act only with, and in accordance with, the advice of the National Executive Council, or of some other body or authority prescribed by law for a particular purpose.

6. Whether advice was given, and by whom, is not justiciable.

7. The Governor General is appointed on the advice of the National Executive Council given in accordance with a decision of the Parliament reached by simple majority in an exhaustive secret ballot. Most elaborate provisions are made for the removal or suspension of the Governor General.

8. The "executive power of the people" is vested in the Head of State. The National Executive consists of the Head of State and the National Executive Council consisting of all the Ministers, the Prime Minister being Chairman of the Council.

9. (i) The Ministry is a "Parliamentary Executive".
   (ii) Only Members of Parliament may be Ministers.
   (iii) The Ministry is "collectively <u>answerable</u> to the People, through the Parliament, for the proper carrying out of the executive government and for all things done by or under the authority of the National Executive".
   (iv) The Ministry is liable to be dismissed from office "<u>either collectively</u> or <u>individually</u>" in accordance with the Constitution.

10. (i) The Prime Minister is appointed, "at the first meeting of the Parliament after a general election and otherwise from time to time as the occasion ... arises by the Head of State, acting in accordance with a decision of the Parliament".

(ii) If Parliament is not sitting when an appointment is to be made, the Speaker must immediately call it.

(iii) The Constitutional Planning Committee wished to involve the Parliament as a whole in the election of the Prime Minister. They were at one with the House of Assembly in wanting to get away from the previous system under which the Ministers chose a Chief Minister from amongst themselves and the Ministers were appointed by a Committee of the House. The example of Western Samoa, already independent for thirteen years, must have been attractive.

The Committee did have to face a situation in which it was unlikely that there would be a few strong parties. Rather there would be Independents and a goodly number of weak parties. The direct election idea was seen as one that would work in a variety of circumstances. If any party, or coalition of parties, groups and individuals had an effective majority, it would have no difficulty in seeing that its Leader was elected. If there was no such effective majority, Parliament could elect the Leader of the largest group, and it would be up to him to govern without a certain majority or to try to create a majority through an astute choice of Ministers. It might be, too, that the person the Parliament thought most suitable for the Prime Ministership was either a member of a small group, or of no group at all. He could be elected Prime Minister and it would be up to him to build support for a government by the choice of an effective combination of Ministers.

Standing Order 7 of the National Parliament seeks to facilitate the election of a Prime Minister having a realistic expectation of forming an effective Ministry by permitting the Parliament to adjourn for up to three sitting days when an election of the Prime Minister is an item of business. This affords time for negotiations between groups and individuals.

11. (i) The Prime Minister may be dismissed from office in accordance with the Leadership Code.

(ii) He may be removed from office by the Head of State following a decision of Parliament after receipt of medical reports that he is unfit by reason of physical or mental incapacity to carry out the duties of his office.

(iii) He ceases to hold office when Parliament meets after a general election.

12. Otherwise he is irremoveable except for the constructive vote of no confidence procedure.* That is as follows:- The Prime Minister shall be dismissed by the Head of State if the Parliament passes a motion of no confidence in him or in the Ministry, except where the motion is moved in the last year of the five year Parliament. In that latter event, the Parliament is dissolved and the Prime Minister stays in office until Parliament meets after the ensuing general election. Parliament can only otherwise be dissolved by its own vote.

A motion of no confidence is carefully defined as one

a) that is expressed to be a motion of no confidence in the Prime Minister or the Ministry;

b) of which not less than one week's notice, signed by a number of Members of the Parliament being not less than one-tenth of the total number of seats in Parliament has been given;

c) nominating the next Prime Minister, if moved during the first four years of the life of Parliament;

d) not nominating the next Prime Minister if moved during the last year of the five year life of the Parliament.

A motion of no confidence in the Prime Minister or in the Ministry may not be moved during the period of six months commencing on the date of the appointment of the Prime Minister.

13. A motion of no confidence in a Minister must also be signed by one-tenth of the Members but does not nominate a successor. It may be moved at any time.

14. Ministers are appointed and dismissed on the advice of the Prime Minister who determines their titles, portfolios and responsibilities.

---

* This procedure also exists in Lesotho, from which it appears to have been borrowed.

15. All departments, sections, branches and functions of government must be the political responsibility of a Minister, and the Prime Minister is politically responsible for any of them not otherwise allocated to a Minister. Mere responsibility to Parliament does not confer on a Minister any power of direction or control.

16. Parliament can only be dissolved before the effluxion of its five year life if
    a) the Parliament by an absolute majority vote so decides; or
    b) if within the last twelve months of its life
        (i) a vote of no confidence in the Prime Minister or the Ministry is carried; or
        (ii) the Government is defeated on the vote on a question the Prime Minister has declared to the Parliament to be a question of confidence.

    The Constitutional Commission which reported in 1983 recommended that the Head of State be given power to dissolve Parliament before the end of its normal term in the circumstances in which Parliament may be dissolved in the usual Westminster type Constitution.

17. The Prime Minister may resign personally, in which event the other Ministers retain office but are at the disposal of the incoming Prime Minister.

    The Ministry may resign collectively.

18. The Constitution provides for permanant parliamentary committees and excludes Ministers from membership in them.

How has this most elaborate of constitutions fared in operation in a society composed of a bewildering number of tribes and languages, formidable physical barriers to communications and fierce local loyalties? It has done remarkably well. Or rather the country has been well served by a fearless judiciary, both local and expatriate, and by politicians who, though clearly ambitious, have agreed to play by the rules of the game and to allow changes of government to come about. Perhaps the independence of Members of the Parliament, and their weak or non-existent party loyalties, have served to frustrate power hungry tendencies. How far that independence is due to local loyalties and resistance to party politics or to a virtually fixed term Parliament, which has steadfastly refused to vote for its own early dissolution, is an open question. But clearly Papua New Guinea is a functioning parliamentary democracy with a strong government even if it is reconstituted frequently, albeit often under the same Prime Minister, as coalitions shift and slide.

Oddly, the first problem to arise in working the Constitution was that in one particular it is not elaborate enough! It does not specify how Parliament is to choose the Prime Minister, whether by open or secret ballot, and by what procedures. After the first post-independence general election the Parliament was faced with a Standing Order 8(1) which merely provided that "the Prime Minister shall be elected by a motion, duly moved and seconded, without notice". This implied one nomination had to be moved at a time. This might confer an unfair advantage on the first nomination. Consequently Standing Order 8(1) was suspended and the following procedure adopted:-

> (*a*) Mr Speaker to call for and accept nominations one at a time, duly moved and seconded;
> (*b*) In the case of only one nomination, Parliament to divide for and against and Members to move to positions indicated by the Speaker;
> (*c*) In the case of two nominations, Parliament to divide and Members to move to positions indicated by the Speaker;
> (*d*) In the case of three or more nominations, Parliament to divide into the respective number of nominations received, and Members to move to positions indicated by the Speaker; and the candidate with the most number of votes, to be declared Prime Minister;
> (*e*) In all cases, the Clerk to record each vote for publication in the Minutes of Proceedings.

This procedure has been used ever since.

In August 1977 there were two nominees, Mr. Michael Somare, who had been Prime Minister since Independence, having been the Chief Minister in office on Independence Day, and Sir John Guise, elected as an Independent but by sitting day aligned with the United Party. The Speaker asked the Members to indicate their choice between the two by moving to separate parts of the Chamber where the two contenders sat. Mr. Somare won, 69:36.

The draftsmen of the Solomons and Tuvaluan Constitutions took care of this problem by specifying a detailed procedure for election of the Prime Ministers in schedules to the two Constitutions.

The 1977 general election was held on the expiry of the five year term of the Assembly elected before Independence in 1972. The Government had twice failed to get the House to vote for its own early dissolution. The Party allegiance in that House had

been fluid. At the dissolution there were thought to be

United Party (Sir Tei Abal)	34
Pangu Pati (Somare)	22
Peoples Progress Party (Julius Chan)	12
National Party	10
Mataungan Association	3
Papua Besena	2
Independents	19

The election saw the defeat of half the sitting Members, including seven Cabinet Ministers, and indicated an attachment by voters to local issues and personalities rather than national policies and party political allegiances. The results at the opening of the new Parliament appeared to be

Pangu Pati	30
United Party	25
Peoples Progress Party	18
Papua Besena	6
Independents	30

Each of the parties claimed a higher level of support than was apparent.

Mr. Somare formed a coalition Government with Mr. Chan of the Peoples Progress Party. Sir Tei Abal had failed to put together a coalition of smaller parties and Independents. Sir Tei acted as Opposition Leader in the new Parliament.

In November 1978, Mr. Somare reconstructed the Government after changing his coalition parties from the Peoples Progress Party to the United Party. (This followed an eight day Government of Pangu Pati, Peoples Progress Party and United Party Members.) This new Government was without a majority as the United Party had split earlier in the year and some of its members formed the Peoples United Front under a former Pangu Pati Minister. The Peoples Progress Party agreed to support a motion of no confidence in the Government moved by the Peoples United Front Leader, Mr. Okuk, now Leader of the Opposition. Under the seven day notice rule there followed a period of intense lobbying. On 16th November Okuk sought to amend the motion to substitute the name of Julius Chan for his own as nominee for Prime Minister. This amendment was defeated and the original motion was then itself defeated 63:45.

Two more motions of no confidence were put and lost in 1979. But in March 1980 a motion nominating Sir Julius Chan (as he had become) as Prime Minister was carried against Somare by 63:34. The cause of this was the Rooney affair, the details of which are too complicated to relate here but included the resignation of half the Supreme Court bench because of political interference after several Cabinet Ministers had been committed for contempt, but one had then been released by the Prime Minister, and another was sentenced to ten weeks hard labour.

The motion of no confidence had been preceded by a motion for dissolution moved by Sir John Guise, which was defeated even though the Prime Minister voted for it "in a personal capacity and not as Prime Minister".

Sir Julius Chan's new Government was a coalition of Peoples Progress Party, part of the United Party, Papua Besena, Melanesian Alliance and Independents. By February 1981 this new Government was in serious trouble. The Minister of Health was convicted of assault and driving under the influence, refused to resign and had to be dismissed. Three other Ministers had their resignations accepted: the Minister of the Environment and Conservation, on trial for rape; the Minister for Minerals and Energy, convicted of obstructing the police; and the Minister of Works and Supply, convicted of driving under the influence. Sir Julius was moved to criticise strongly those provisions of the Constitution which prevented Parliament's early dissolution except by its own vote or carriage of a motion of no confidence in the last twelve months of Parliament's term. He criticised the need to include a new nominee for Prime Minister in a motion of no confidence, as an invitation to corruption. He also said that "if a Prime Minister is determined to stay in office he can do so quite easily if he is prepared to grant enough favours". In his view the Constitution should allow the Prime Minister to ask the Head of State for a dissolution if the Prime Minister felt he could not govern effectively. "Under our present system it is easy to imagine circumstances in which Members collectively refuse to give any Government a stable working majority but at the same time insist on serving out their full terms. This seems to me a recipe for weak, unstable government dependent on what I have called political corruption."

Fresh elections were held in the ordinary course in June 1982. The Pangu Pati emerged as the largest group and Somare was elected as Prime Minister. The composition of the House at the first sitting was thought to be

Pangu Pati	47
National Party	14
Peoples Progress Party	10
Melanesian Alliance	8
United Party	6
Papua Besena	3
Diro's Independents	11
Other Independents	5

Brigadier Diro (the recently retired G.O.C., Papua New Guinea Defence Force) became Leader of the Opposition until August 1983 when Okuk was returned in a bye-election and resumed leadership of the National Party which later went into Somare's coalition Government.

Party allegiances continued to fluctuate over the ensuing years. On 18th March 1985 Mr. Paias Wingti resigned as Deputy Prime Minister and formed his own People's Democratic Movement. A motion of no confidence nominating Wingti as Prime Minister was defeated. In November 1985 the National Party withdrew from the Government. A fresh motion of no confidence in the Government nominating Wingti as Prime Minister was carried 55:52 with the backing of Sir Julius Chan. Wingti then assumed office. In May 1986 three former Ministers withdrew from the Pangu Pati to form yet another party, The League of National Advancement.

SOLOMON ISLANDS

(Population: 205,000 93% Melanesian
Area: 15,220 sq. miles
Island archipelago stretching 1,500 km)

The Solomon Islands (previously known as the "British Solomon Islands" and the "British Solomon Islands Protectorate") became independent on 7th July 1978. The Chief Minister in office on that day became Prime Minister.

At the 1976 general election most of the thirty-eight Members of the Legislative Assembly were elected as Independents. The so-called "Independent Group" was the largest in the House. There were three political parties represented, the Solomon Islands United Party led by the Chief, later Prime Minister, the National Democratic Party whose Leader was styled as Leader of the Opposition, and the Peoples' Alliance with one member.

The Preamble to the Independence Constitution* enshrines responsible government. As a basis of their united nation the people of the Solomon Islands were said to "Agree and Pledge" that

> "(a) our government shall be based on democratic principles of universal suffrage and the responsibility of executive authorities to elected assemblies."

The Governor General is appointed by Her Majesty in accordance with an address from Parliament and may be removed by Her Majesty before the expiration of a five year term only in accordance with an address from Parliament supported by the votes of at least two-thirds of all the Members of the Parliament, for misbehaviour or for such other cause as may be prescribed by Parliament.

The executive authority is vested in the Queen and is made exercisable by the Governor General in the standard form of words. The usual provision is made as to when the Governor General shall act on advice of the Cabinet, or a Minister, the Prime Minister or on his own deliberate judgment; the usual privative clause is added. The Governor General's right to be kept fully informed by the Prime Minister is expressed.

---

* Solomon Islands Independence Order, SI 1978/783, p. 1949 (U.K.)

The Constitution proceeds to provide for the election of the Prime Minister in specific terms. The complete provisions dealing with the election of the Prime Minister and his tenure are as follows:-

33.—(1) There shall be a Prime Minister who shall be elected as such by the members of Parliament from amongst their number in accordance with the provisions of Schedule 2 to this Constitution.

(2) There shall be, in addition to the office of Prime Minister, such other offices of Minister of the Government, not exceeding eleven or such greater number as Parliament may prescribe, as may be established by the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that one of such offices of Minister of the Government shall be that of Deputy Prime Minister.

(3) The Ministers other than the Prime Minister shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister, from among the members of Parliament:

Provided that if occasion arises for making an appointment while Parliament is dissolved a person who was a member of Parliament immediately before the dissolution may be appointed.

34.—(1) If a resolution of no confidence in the Prime Minister is passed by Parliament by an absolute majority of the votes of members thereof the Governor-General shall remove the Prime Minister from office, whereupon the members of Parliament shall meet as soon as possible during the same session of Parliament to elect a new Prime Minister in accordance with the provisions of Schedule 2 to this Constitution.

(2) A motion for a resolution of no confidence in the Prime Minister shall not be passed by Parliament unless notice of the motion has been given to the Speaker at least seven clear days before it is introduced.

(3) The office of Prime Minister shall also become vacant—

(*a*) when, after a general election, the members of Parliament meet to elect a Prime Minister in accordance with the provisions of Schedule 2 to this Constitution;

(*b*) if he ceases to be a member of Parliament for any reason other than a dissolution of Parliament;

(*c*) if he is elected as Speaker or Deputy Speaker; or

(*d*) if he resigns such office by writing under his hand addressed to the Governor-General.

(4) Subject to the next following subsection, during any period when the office of Prime Minister is vacant, the person who held that office immediately before the vacancy arose shall continue to perform the functions of Prime Minister until a person is elected to the office of Prime Minister in accordance with the provisions of Schedule 2 to this Constitution.

(5) If the person holding the office of Prime Minister dies, the Governor-General shall, after consultation with the other Ministers, appoint one of them to perform the functions of Prime Minister until a person is elected to the office of Prime Minister in accordance with the provisions of Schedule 2 to this Constitution.

(6) The office of a Minister other than the Prime Minister shall become vacant—

(*a*) upon the election of any person to the office of Prime Minister in accordance with the provisions of Schedule 2 to this Constitution;

(*b*) if he ceases to be a member of Parliament for any reason other than a dissolution of Parliament;

(*c*) if he is elected as Speaker or Deputy Speaker;

(*d*) if he resigns such office by writing under his hand addressed to the Governor-General; or

(*e*) if his appointment to the office of a Minister is revoked by the Governor-General, acting in accordance with the advice of the Prime Minister.

SCHEDULE 2 TO THE CONSTITUTION

ELECTION OF PRIME MINISTER

Calling of election meeting.

1. As soon as possible after a general election of members of Parliament, or whenever there is a vacancy in the office of Prime Minister, the Governor-General shall convene a meeting of members for the purpose of electing a Prime Minister by issuing to each member a notice stating—

(*a*) the date, place and time of the election meeting;

(*b*) the place at and the date and time on which nomination papers are to be delivered to the Governor-General which time shall be not later than four days before the date appointed for the election meeting.

List of candidates.

2. A list specifying all candidates nominated and their respective nominators shall be submitted by or by direction of the Governor-General to each member prior to the election meeting.

Candidature.

3.—(1) All members shall be eligible for candidature.

(2) No member shall be a candidate unless he is nominated as such by four other members, and no member may nominate more than one candidate.

(3) Any candidate may withdraw his candidature at any time before the conclusion of the election.

Election may be countermanded or suspended.

4. If, at any stage of the election, a candidate dies or in the opinion of the Governor-General is seriously incapacitated, or if for any other reason the election in the opinion of the Governor-General cannot or is unlikely to be successfully completed in accordance with paragraph 7 of this Schedule, the Governor-General may either—

(*a*) countermand the election in which case the electoral procedure shall be commenced *de novo*; or

(*b*) suspend the election proceedings until some later time or day.

Method of voting.

5.—(1) The election shall be by secret ballot.

(2) Each member shall have only one vote at the first and at each subsequent ballot, if any, held in accordance with paragraph 7 of this Schedule.

Conduct of meeting.

6.—(1) The election meeting shall be presided over and the election conducted by the Governor-General.

(2) The Governor-General may for the purpose of counting votes and for any other purpose relating to the conduct of the election enlist the assistance of such number of public officers as he shall consider necessary.

(3) No person other than the Governor-General, a member, or a public officer whose assistance is enlisted under the preceding subparagraph shall be present at an election meeting.

7.—(1) If any candidate should at any ballot receive an absolute majority of votes he shall thereby be elected Prime Minister.

(2) If no candidate should receive an absolute majority of votes at the first ballot a further ballot shall be held wherein—

(*a*) the candidate who received fewest votes at the first ballot shall thereby be eliminated; or

(*b*) if there is a tie between two or more candidates for the fewest number of votes received at the first ballot, the Governor-General shall decide by lot which one of such candidates shall be eliminated.

(3) If in a second ballot no candidate should receive an absolute majority of votes, subject to subparagraph (5) of this paragraph, further ballots shall be held until one candidate receives an absolute majority of votes.

(4) The procedure specified in subparagraphs (1) and (2) of this paragraph relating to the first and second ballots shall apply in relation to subsequent ballots.

(5) If, after one or more ballots, all candidates save two have been eliminated, only one further ballot shall be conducted to decide the election between these two candidates at which the candidate receiving the greater number of votes shall be elected Prime Minister.

(6) If the ballot conducted in accordance with the preceding subparagraph results in a tie between the two candidates, one further ballot shall be conducted to decide the election between these two candidates and if there is a tie between them again, the Governor-General shall countermand the election and the election procedure shall be commenced *de novo*.

(7) No ballot shall be held within a period of less than six hours after the conclusion of the preceding ballot.

8. When the count has been completed in any ballot the Governor-General shall forthwith announce to the meeting the number of votes received by each candidate and, where any candidate has received an absolute majority of votes, or the greater number of votes under paragraph 7 (5) or (6) of this Schedule, shall declare such candidate to have been elected Prime Minister.

9. Upon the election of a Prime Minister, the Governor-General shall cause that fact and the identity of the Prime Minister—

(*a*) to be made known to the public in such manner as to him may seem appropriate; and

(*b*) to be published as soon as may be in the Gazette.

10. Any dispute arising out of or in connection with the calling or conduct of any election meeting or the election of the Prime Minister under this Schedule shall be determined by the Governor-General whose determination of the matter in dispute shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

11. The functions conferred upon the Governor-General by this Schedule shall be exercised by him in his own deliberate judgment.

The collective responsibility of the Cabinet is set out in Section 35.

"35. (1) There shall be a Cabinet for Solomon Islands consisting of the Prime Minister and the other Ministers.

(2) The functions of the Cabinet shall be to advise the Governor General in the government of the Solomon Islands and the Cabinet shall be collectively responsible to Parliament for any advice given to the Governor General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

... "

This formula, now used several times in constitutions, sweeps individual responsibility of a Minister into the collective responsibility of the Cabinet. In theory, at least, the Solomon Islands Cabinet can not disavow the actions of a Minister and throw him to the parliamentary wolves.

The financial initiative of the Crown is fully protected by Section 60 of the Constitution.

Because of the composition of the Parliament already noted, the Constitution makes elaborate provision for designation of an Opposition Leader and a Leader of the Independent Members.

66.—(1) If at any time it appears to the Governor-General, acting in accordance with the advice of the Speaker, that the leader of an opposition group, by reason of the numerical strength of that opposition group or by reason of the support which he receives from the members of opposition groups generally, should be appointed as Leader of the Official Opposition, the Governor-General shall appoint him as such leader.

(2) If at any time it appears to the Governor-General, acting in accordance with the advice of the Speaker, that the leader of an independent group, by reason of the numerical strength of that independent group or by reason of the support which he receives from the members of independent groups generally, should be appointed as Leader of the Independent Members, the Governor-General shall appoint him as such leader.

(3) If the Governor-General, acting in accordance with the advice of the Speaker, considers that the Leader of the Official Opposition is no longer the person who, if the office of Leader of the Official Opposition were vacant, would be appointed thereto under subsection (1) of this section, the Governor-General shall remove the Leader of the Official Opposition from office.

(4) If the Governor-General, acting in accordance with the advice of the Speaker, considers that the Leader of the Independent Members is no longer the person who, if the office of Leader of the Independent Members were vacant, would be appointed thereto under subsection (2) of this section, the Governor-General shall remove the Leader of the Independent Members from office.

(5) Before tendering advice to the Governor-General under subsections (1) and (3) of this section, the Speaker shall consult with the leaders and members of the opposition groups and such other persons as he deems appropriate, and before tendering advice under subsections (2) and (4) of this section, the Speaker shall consult with the leaders and members of the independent groups and such other persons as he deems appropriate.

(6) If the Leader of the Official Opposition or the Leader of the Independent Members—

(a) is required under section 51 of this Constitution to cease to perform his functions as a member of Parliament;

(b) otherwise ceases to be such a member; or

(c) is elected as Deputy Speaker,

his office shall become vacant.

(7) For the purposes of this section—

"opposition group" means a group of members of Parliament in opposition to the Government, whose number includes a leader who commands their support;

"independent group" means a group of members of Parliament whose members are independent both of the Government and of any opposition group and whose number includes a leader who commands their support.

(8) Parliament may by resolution supported by an absolute majority of the members thereof prescribe the minimum number of members of opposition or independent groups there must be before the Leader of the Official Opposition or of the Independent Members, as the case may be, is appointed under this section.

Prorogation and dissolution may only occur upon resolution of an absolute majority of the Members of Parliament. If a Prime Minister is defeated on a vote of confidence, Parliament continues.

The Constitution does not provide for an Executive Council, or for any requirement of reconsideration by the Cabinet of its advice, as do the Western Samoan and Cook Islands Constitutions.

The Parliament is a unicameral Legislature.

The first general election after Independence was held in August 1980. Two-thirds of the sitting Members were defeated. There were 244 candidates for the thirty-eight seats. None of the three parties gained effective control. The retiring Prime Minister was re-elected pursuant to Section 33(1) and Schedule 2 to the Constitution by twenty-five votes to five. He formed a Cabinet composed of Solomon Islands United Party and Independent Members.

In August 1981 the Prime Minister, Sir Peter Kenilora, was removed from Office following a vote of no-confidence in him passed pursuant to Section 34(1) of the Constitution. The Parliament then elected Mr. Mamaloni Prime Minister 20:17. He was the defeated candidate in the 1980 election, had been Chief Minister in 1974-76 and was now Leader of the Peoples' Alliance. He formed a coalition Government of Peoples' Alliance, National Democratic and Independent Members.

The overthrow of Kenilora followed what the Pacific Islands Monthly described as a "lobbying campaign" against him "which was fuelled by discontent based on personal rather than basic political issues". Effective control of the Parliament was in the hands of the Independent Members who switched their allegiance from Kenilora to Mamaloni.

The second post-independence general election was held in October 1984. Again there was a large number of candidates (230 for 37 seats). The results, apart from being a defeat for Mamaloni, his links with China and his republican platform, also saw a sharp reduction in the number of Independent Members and what may be the emergence of a regular party system. The results

were:

Solomon Islands United Party	13
Peoples' Alliance	12
National Democratic Party	1
Solomons Ano Sagufenua Party	4
Independents	7

Sir Peter Kenilora won the ballot for the Prime Ministership 21:12. No one outside his own party supported Mamaloni. Sir Peter formed a coalition Cabinet of Solomon Islands United Party, Solomons Ano Sagufenua and three Independents.

KIRIBATI

Population: 60,000
33 Islands in three groups: 314 square miles in
2 million square miles of ocean

Kiribati was formerly the most populous part of the Gilbert and Ellice Islands known as the Gilbert Islands. In the development of representative and responsible institutions in the Colony an elected Government Leader was always provided for in keeping with Pacific precedent set by Western Samoa. The "Chief Elected Member" of the 1967 Government has already been noted. Under the 1970 Gilbert and Ellice Islands Order a Leader of Government Business was elected by the elected Members of the Legislative Council. Four other elected Members were appointed to the Executive Council by the Resident Commissioner after consultation with the Leader of Government Business.

In 1974 a Ministerial form of government was introduced. The Chief Minister was elected by the House of Assembly and four to six Ministers were appointed by the Governor on the advice of the Chief Minister. Full internal self-government was accorded in 1977 with Independence to follow in 1978.

The new Independence Constitution was drafted by a Constitutional Committee of 165 notables and endorsed by the House of Assembly. In opting for a republican form of government, it was decided to avoid both the separation between Head of State and Head of Government, and also the separation of powers. Instead, the President was to come from and be responsible to the Legislature. The executive authority was to be vested not in the President but in the Cabinet which was to be collectively responsible to the Assembly.

After each general election there must be a Presidential election. The Members of the Assembly nominate not less than three nor more than four of their Members to be candidates and the President is then chosen by the electorate. Once elected, the President continues to sit in the Assembly but a bye-election is held for his constituency which then has two Members. He appoints the Cabinet from among the Members of the Assembly. He must resign

(i) if a motion of no confidence in him or the Government is supported in the Assembly by the votes of a majority of all the Members of the Assembly; or

(ii) if, in respect of any matter before the Assembly the President notifies the Speaker that a vote on that matter raises an issue of confidence, and in a subsequent vote on that matter it is rejected by a majority of all the Members of the Assembly; or

(iii) if he ceases to be a Member of the Assembly otherwise than by its dissolution (i.e. if he is disqualified from sitting).

On the President's resignation a Council of State takes over his functions and those of the Cabinet, and the Assembly is itself dissolved. After the ensuing general election, a new Presidential election is held.

It will be readily seen that this constitutional arrangement lacks any enforcement mechanism: there is no one with reserve powers to require the President to comply with its terms. Would it work? At the time of Independence, 1976, there was one "party" in the Assembly, a grouping formed on a single issue - opposition to the creation of a defence force. Members supporting this "negative" policy "won" the general elections held after Independence. There were thus no real party divisions.

The President's Government nonetheless fell on 10th December 1982 on an issue designated as one of confidence. On 9th December the Assembly had defeated by 20:15 the first reading of the Statutory Salaries (Amendment) Act, notwithstanding earlier approval of the 1982 Budget which provided for the increase. The procedural need to amend the Schedule to the Act had been overlooked and it was to be taken care of in the 1983 budget proceedings. The Government sought on 10th December to suspend the Rules to allow re-introduction of the Bill. The President notified the Speaker that the procedural motion was to be treated as an issue of confidence. The procedural motion was lost 20:15, twenty being a majority of all Members (37). The President ceased to hold office, the Council of State took over and the Assembly was dissolved.

After the election Mr. Tabai, the previous President was re-elected. (H. had been Chief Minister before Independence and became President by operation of the Kiribati Independence Order. He had then been elected President after the first general election held in January 1982.)

While there continues to be no parties as such, there are in broad terms a government side supporting Mr. Tabai and a non-government side.

Members of the Kiribati Assembly, other than the President, are subject to the Recall.

TUVALU

Population 12,000
Area 10 sq. miles (500,000 sq. miles of ocean)
Nine islands spread along a 576 km line between Fiji and the Equator:

Formerly the Ellice Islands, Tuvalu is inhabited by Polynesians. The Gilbert Islands with which the Ellice Islands were formerly administered as the Gilbert and Ellice Islands Colony are inhabited by Micronesians. The two island chains were separated before Independence partly for racial reasons and partly because the people of Tuvalu wished to take Independence as a Monarchy. An affirmation of the peoples' allegiance is contained in the Preamble to the 1978 Independence Constitution which follows the pattern of that of the Solomon Islands.

The Constitution established a unicameral Parliament of twelve elected Members, five of whom serve in the Cabinet. By dint of such numbers Tuvalu may constitute a special case.

The Governor General is appointed and may be removed by the Queen on the advice of the Prime Minister tendered after he has in confidence consulted the Members of Parliament. No term is set to his appointment. In contrast with many other recent constitutions there is no requirement that the Governor General be a citizen of Tuvalu. Indeed, the provisions of the Constitution providing for an acting Governor General or for the situation when there is no Governor General expressly contemplate there being no one in Tuvalu able to perform the Governor General's functions in which case they devolve upon the Speaker.

The Prime Minister is to be elected at a meeting of the Parliament convened by and presided over by the Governor General in accordance with a detailed procedure set out in Annex I to the Constitution. It is in identical terms to those of Schedule II to the Solomon Islands Constitution. The provisions relating to the vacating of office by the Prime Minister, the Cabinet and so on are very much as in the Solomon Islands Constitution. A vote of no confidence is "in the Government" and not "in the Prime Minister" and must be passed by the affirmative vote of a majority of all the Members. The Cabinet is collectively responsible to Parliament in the same terms as set out in Section 35 of the Solomon Islands Constitution, above.

A major difference between the two Constitutions lies in the preservation of the powers in the Governor General to prorogue and dissolve on the advice of the Prime Minister and not in accordance with a vote of the Parliament. However, in one sense, the difference is more apparent than real because the Prime Minister may not advise a dissolution unless Parliament has resolved that he should do so. A very real difference does arise if the office of Prime Minister is vacant "and no person has been elected to that office within such period as the Governor General, acting in his own deliberate judgment, may consider reasonable". The Governor General, acting in his own deliberate judgment, may then dissolve Parliament.

An important provision in the Tuvalu Constitution is that which forbids Parliament to proceed upon a Bill after its first reading until the next following session of Parliament. This restriction is to permit consideration of the Bill by the several Island Councils. This is a singular feature which may commend itself to those who wish to ensure "consensus".

At the time of Independence a twelve man Legislature was in existence and Mr. Toalpi Lauti was Chief Minister. He became Prime Minister. There had been no political parties. In December 1977 just months before Independence an Opposition group in the Parliament was formed by Mr. Henry Naisali, a former Financial Secretary of the Gilbert and Ellice Islands. After the general election of September 1981, which saw four of the twelve sitting Members defeated - one Minister, 1 pro-government Independent and two Opposition group members - Lauti was nonetheless defeated in the ballot for the Prime Ministership 5:7 by Tomasi Puapua who had been a member of the Opposition group in the previous Parliament. After the general election of September 1985, Puapua was re-elected as Prime Minister.

The reason for the defeat of Lauti lay in a scandal concerning Tuvalu's foreign reserves. Lauti had invested the lot, together with funds of the Church of Tuvalu, with a Californian property developer, Mr. Sidney Gross. The 1981 election, therefore, really did represent a judgment by the electors on the Lauti Government, showing once again that a single hot issue can destroy a non-party system. Fortunately for Tuvalu all her funds were recovered from Mr. Gross with interest.

VANUATU

(Population: 117,000
Area: 1,870 km^2
80 Islands stretching 800 km from North to South, lying to the South-east of the Solomon Islands)

Vanuatu was formerly the Anglo-French Condominium of the New Hebrides with a government and legal system which defies rational analysis or explanation.

The islands in the group contain three racial groups, two European languages and a large number of native ones. The bulk of the population is Melanesian. The Constitution adopted is basically a Westminster one: the executive comes from, is responsible to and is dimissed by the Legislature. The Constitution was drafted in a two day Convention and the drafting is quite loose.

The Head of State is the President but the executive power is vested in the Prime Minister and the Council of Ministers. The Prime Minister is elected from among the thirty-nine Members of Parliament by secret ballot in accordance with rules akin to those set out in the Solomon Islands and Tuvalu Constitutions. The Prime Minister appoints the other Ministers from among the Members of Parliament and may remove them. The Council of Ministers is collectively responsible to Parliament. The Prime Minister and other Ministers cease to hold office if a motion of no confidence is passed by an absolute majority of Parliament after notice of motion signed by at least one-sixth of the Members. The Prime Minister also ceases to hold office when Parliament first meets after a general election. Where the Prime Minister dies in office and there is no Deputy Prime Minister, the President has a discretion to choose one of the Ministers to be Prime Minister until a new Prime Minister is elected by the Parliament.

Parliament may be dissolved by the President on the advice of the Council of Ministers (not Prime Minister) whether the Prime Minister has been defeated or not on a vote of no confidence. Parliament may also vote to dissolve itself by an absolute majority of its Members at a sitting at which three-quarters of the Members are present. Where Parliament has been dissolved otherwise than by effluxion of time it may not be dissolved again within twelve months.

MARSHALL ISLANDS

The Marshall Islands form part of the United States trust territories in the Pacific. Their constitutional arrangements would not normally be of interest. However, in their self-government Constitution, while they were stuck with a republican mode, they nonetheless sought to have responsible government, and struck closer to the Westminster idea than did Kiribati. The President is elected not by the people but by the Assembly and is removable on a vote of no confidence passed by an absolute majority of the Assembly. This is after the British Pacific Island pattern. The executive authority is vested in the Cabinet which consists of the President and the Ministers he selects from the Members of the Assembly. The President may dismiss any Ministers and the Cabinet is collectively responsible to the Assembly.

FIJI

Population: 600,000
800 Islands, 100 inhabited
6,938 sq. miles

Fiji is the odd man out in postwar Pacific constitution-making. It has what appeared at first to be a transposed classical Westminster system, which was precisely what the Fiji Constitutional Conference of 1970 expressly sought. Executive power is vested in the Queen and is exercisable by a Governor General. There is a bicameral Legislature with the Senate having delaying powers (but not in relation to appropriation bills). The fifty-two Members of the House of Representatives are elected directly on communal franchises. The Senate has twenty Members, eight appointed on the advice of the Council of Chiefs, one on the advice of the Council of Rotuma, seven on the advice of the Prime Minister for fixed six year terms, and six likewise on the advice of the Leader of the Opposition. The Crown appoints a Prime Minister and there is a conventionally constituted Cabinet which is made collectively responsible to the Lower House of Parliament. The Constitution provides for the office of Leader of the Opposition and his designation.

The appointment of the Prime Minister is provided for by Section 73(2):

> "The Governor General acting in his own deliberate judgment, shall appoint as Prime Minister the member of the House of Representatives who appears to him best able to command the support of the members of that House."

Under Section 70(1), the Governor General may prorogue or dissolve at any time "acting in accordance with the advice of the Prime Minister". That provision standing on its own would appear to say that he can not dissolve on his own initiative but he need not dissolve when advised to do so - the conventional position. The Governor General is, however, expressly empowered to dissolve on his own initiative

a) if in his judgment there is no prospect of his being able to appoint a Prime Minister who can command the support of a majority of the Members of the House of Representatives, and

b) if after an explicit motion of no confidence is carried the Prime Minister within three days neither resigns nor advises a dissolution.

Relating the expressio unius principle to these provisions, the wording of Section 78(1) of the Constitution would appear to oblige the Governor General to dissolve when advised to do so by

a Prime Minister. Section 78(1) reads:

> "In the exercise of his functions under this Constitution, or any other law, the Governor General shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet except in cases where he is required by the Constitution to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet or in his own deliberate judgment."

The Governor General considered himself in the 1977 constitutional crisis free to appoint a Prime Minister who, on post-election party standings as they were publicly known appeared to be in a minority. Yet he considered himself obliged to dissolve on the advice of that Prime Minister after that Prime Minister had been defeated on an amendment to an express motion of confidence moved by the Prime Minister's supporters as the fifth item of business after election of a Speaker, and the unanimous passage of three Bills and supplementary estimates. Parliament was denied the opportunity to settle matters in a situation in which under a conventional Constitution, as in the United Kingdom or Canada, dissolution would have been refused. It was fortunate for all concerned that the Opposition party, although apparently having a majority, with the help of a tiny third party, split (as it seems the Governor General expected) and the Prime Minister secured a handsome majority at the ensuing general election.

In result, therefore, what the Governor General did or felt obliged to do was contrary to the operation of a Westminster model Constitution, despite the fact that the Fijian Constitution used a second-stage refinement of wording on the appointment of a Prime Minister. Under earlier-drawn constitutions - Malaysia, Singapore, Nigeria, Sierra Leone, Uganda, Kenya - the person to be appointed Prime Minister is (or was) the person who appears "likely" to command the support of the majority of Members of the Lower House. In British Guiana, Malta, The Bahamas, Barbados, Grenada, Jamaica and Fiji, all following S.A. de Smith's drafting for Mauritius, the choice was to fall on the person who appears "best able" to command such support. Neither of these phrases and obligations (or that already noted in respect of a late model Caribbean Constitution in St. Kitts-Nevis) really follow conventional practice which requires the Leader of the Opposition first to be sent for after a Prime Minister resigns, even if that Leader has to report that he can not form a Government.

The later Pacific constitutions swept all these difficulties aside, (but created new ones) by insisting on the House, after an election, settling for itself who commands majority support there.

Overseas commentators who profess to be shocked or surprised by the actions of the Fijian Governor General overlook one possibly critical factor. The Governor General is the Prince who, but for the (voluntary) Cession of 1874, would be Paramount King of Fiji. No doubt both he, long in office, and the people of Fiji, expect a certain high degree of leadership from the Queen's Representative, just as it appears to be taken for granted that the Head of State of Western Samoa has a particular status stemming from his place in traditional Polynesian culture. It is obvious that the Polynesians are pretty firmly wedded to the monarchical tradition (Tonga, Fiji, Western Samoa, Cook Islands, Tuvalu).

AUSTRALIAN TERRITORIES

Northern Territory - Population: 144,000
520,280 sq. miles

The Northern Territory of Australia has had full internal self-government since 1978. The final advance to statehood has been delayed by disputes between the Territorial and Commonwealth Governments over uranium mining, Aboriginal affairs and national parks.* Approximately four-fifths of the Territorial Revenue is derived from Commonwealth allocations. Party politics are well entrenched in the Territory at both the territorial and federal level.

There is a strong Asian element in the Territory's population. The Lord Mayor of Darwin is Chinese and the Mayor of Palmerston is a Malay. There are, however, difficult problems in relations between Aboriginals and other races.

The Northern Territory (Self Government) Act, 1978 No. 58 (C. of A.) contains the following provisions.

"31. The duties, powers, functions and authorities of the Administrator, the Executive Council and the Ministers of the Territory imposed or conferred by or under this Part extend to the execution and maintenance of this Act and the laws of the Territory and to the execution of the prerogatives of the Crown so far as they relate to those duties, powers, functions and authorities."

"32.(2) The Administrator is charged with the duty of administering the government of the Territory."

"33 (1) There shall be an Executive Council to advise the Administrator in the government of the Territory in respect of matters over which Ministers have executive authority under Section 35." (The powers prescribed by the Governor General in Council, amounting now to virtually all the matters appertaining to a State.)

The Council consists of the persons for the time being holding Ministerial office. The Administrator is to preside and to convene the Council. (The Australian practice at both Commonwealth and State levels.)

"34. There shall be such number of offices of Ministers of the Territory, having such respective designations, as the Administrator may from time to time determine."

* See "Far Eastern Economic Review" 11 September 1986, p. 38.

"36. The Administrator may appoint a Member of the Legislative Assembly to a Ministerial office, and may at any time terminate the appointment."

"37. The appointment of a person to Ministerial office terminates when

a) he ceases to be a Member of the Legislative Assembly by resignation or disqualification;
b) his appointment is terminated by the Administrator;
c) he resigns and his resignation is accepted by the Administrator;
d) the Legislative Assembly first meets after a general election that takes place after the appointment takes effect."

These provisions have been sufficient to enable full responsible government to operate according to traditional principles in a small Legislature of twenty-five Members. There are only two remarkable features: first, the clear statement in Section 31, an equivalent of which is much to be desired in any Act passed by the Parliament of Canada to accord self-government to the Northwest Territories; secondly, the inclusion in a very traditional Westminster model of the Pacific Islands type provision requiring Ministerial resignations when the Assembly first meets after a general election. But this provision applies not only to the Chief Minister, (a conventional figure not provided for in the Act) but to all Ministers. This is inevitable as the Act does not set up a Chief Minister and then proceed to provide that other Ministers lose office when he resigns or his appointment is terminated. The result is not necessarily the same as the provision in Western Samoa or the Cook Islands because there is no provision that the Administrator appoint as Chief Minister the Member who commands the support of the majority of the Members of the Assembly. In practice the resignations of the Ministers are a formality because of the dominant two party system in the Territory. The only effect of Section 37(d) is that Ministers having been appointed (or re-appointed according to Australian custom) after a general election, resign and are appointed again on the day on which the Assembly first meets. Perhaps it was thought that this step should be imposed in case there were weak parties and it was not known until the Assembly met (members of unknown allegiance gathering from remote areas) who would have the confidence of the Assembly. At the moment Section 37(d) is regarded as a

nuisance. Should the two party system ever weaken or a third party hold the balance of power, Section 37(d) could have interesting consequences.

Norfolk Island - Population: 2,200
13 sq. miles

In the case of Norfolk Island, the Norfolk Island Act, 1979 provides for a similar structure of Administrator and Executive Council, and a unicameral Legislature. Because there are no party politics on the Island, the following provisions were included in the Act:

"11. There shall be an Executive Council to advise the Administrator on all matters relating to the government of the Territory composed of those holding executive offices.

12. There shall be such number of executive officers, having such respective designations, as the Legislative Assembly from time to time determines by resolution.

13. (1) Subject to this section, the Administrator may, on the advice of the Legislative Assembly,

(a) appoint a Member of the Legislative Assembly to an executive office; or

(b) terminate such an appointment.

(2) The Administrator may at any time terminate an appointment made under subsection (1) if, in his opinion, there are exceptional circumstances that justify him so doing.

14. Appointment to an executive office terminates when

...

(d) the Legislative Assembly meets after a general election of the Legislative Assembly that takes place after the appointment takes effect.

7. The Administrator shall exercise his powers

...

(c) where it is provided he is to act on the advice of the Legislative Assembly, in accordance with that advice;

(d) in forming an opinion, at his own discretion.

There is no requirement that giving advice as to executive appointments take priority over all other business after the election of the President of the Assembly.

Norfolk Island does not have either full internal self-government or responsible government. Its provision for the election of the Members of the Executive Council is, therefore, akin to that in the Jamaica Constitution of 1944. The provisions were drafted without the need to foster collective responsibility.

IV. LESSONS FROM RECENT COMMONWEALTH EXPERIENCES

It may readily be objected that I have considered a very selective sample of Commonwealth jurisdictions; that I have ignored Africa, Asia, the Far East, the West Indes, not to mention Canada. The choice of the Pacific Islands was deliberate, as was the exclusion of the other areas of the Commonwealth. I do not mean to say that there are not lessons to be learned from say India, or Grenada, but they are not as direct or obvious. Similarly, the dismal fate of some African Commonwealth countries is doubtless instructive as well. The experience of the United Kingdom and the original Dominions really underlie every other country's pattern of government. The Pacific Islands offer an experience of roughly twenty-five years of rapid constitutional development and operational experience with innovative forms of the Westminster model designed (it was at least hoped) to suit traditional cultures in societies which, though they may have linguistic and racial mixes within them, are not rent by tribalism and by and large do not have wholly artificial boundaries (with the exception of that part of the Solomons Archipelago included in Papua New Guinea). The Imperial Power came late to the Pacific (with the exception of New Zealand) and handled its peoples beningly, even if in some cases this amounted simply to neglect. There was no attempt at colonization. The Pacific peoples responded positively to Christianity and pretty much so to British and British-type rule. The Polynesians excited admiration, the Melanesians and Micronesians affection amongst administrators and traders. Native ways were left fairly undisturbed, and did not, in any event, prove incompatible with either central government or higher education. All these influences were mildly paternalistic. Island life was self-sufficient to a great degree. Should a comparison between the approach to government in the British Pacific (in which I include New Zealand and Australian mandates) and another approach be desired, one only has to compare Western Samoa with the degradation and coca-cola culture of wealthy American Samoa. It is not surprising that the Government of Papua New Guinea has again postponed the introduction of television.

The Northwest Territories is home to traditional societies, and to European elements. The societies are not at each others throats as are so many African tribes. Traditional ways have been left undisturbed until recent times. The white man came in any numbers within the last century. The consensual form of government with its emphasis on elders and medicine men is mildly

paternalistic in its nature. The advance to self-government has been rapid. Party politics has yet to arrive openly at the level of Territorial politics although it is in place for elections to the Parliament of Canada. There are sufficient parallels to make it worthwhile to see what can be learned from the Pacific experience.

As to Africa, it should be remembered that amongst the apparent wreckage of the Westminster legacy responsible government has, despite everything, proved remarkably resilient except where societies have reverted to traditional autocratic monarchies, fallen under military rule or descended into choas. A multi-party Westminster Parliament operates in Botswana. Even in the "one party" states of Kenya, the Gabon, the Gambia and Sierra Leone responsible government in a modified form continues. Sitting Members, including many Cabinet Ministers, are regularly defeated at elections. The Houses perform their traditional role of consenting after ventilation of grievances and criticism (perhaps guarded). It would, however, be difficult to know how to characterize the English Parliament of the fifteenth and sixteenth centuries other than as "one-party", the King's. In time, those African Parliaments that survive may grow again towards the paper pattern they were originally given on Independence.

In the West Indies, responsible government is alive and well. But the experience is not of direct assistance. For one thing there are no "traditional cultures" in the Pacific or Northwest Territories sense. The Parliaments there all see strong party politics, of long standing. The Constitutions have all been drawn in such a way as to try to state explicitly the conventions of the British Constitution, as perhaps slightly misunderstood in the late 1950's and 1960's at the height of what Professor Norton calls the constitutional myth that a Government must win on every issue in order to demonstrate that it has the confidence of the Lower House.

Turning then to the Pacific states, the most striking lesson is that every jurisdiction which has assumed self-government or achieved Independence over recent decades, even if adopting a republican form as in Kiribati or Vanuatu, has deliberately chosen, and carefully striven to maintain, responsible government.

There have not been wanting those who have advised or been of the opinion that responsible government is unsuitable for small jurisdictions without, or desiring to avoid, the party system, and committed to a greater participation of the people and their traditional representatives in decision making.* There may be those who question whether the traditional pattern of responsible government is relevant to a society such as the Northwest Territories. The same question has been posed in respect of each of the distinct, very traditional, societies which have achieved independence in the Pacific in recent years. And yet even territories long administered by the U.S.A. have avoided the executive presidency model and chosen responsible government.

What do the critics of responsible government fear? It would seem to be the polarising between the Government and a Government in waiting in what is principally a legislative body, leading to an under-employment of members and their exclusion from policy and administrative matters. The critics believe that an institutionalised power struggle between competing teams will prevent Members of the Legislature from having anything to do with administration. The desired system of government is one in which both legislative and administrative decisions will come about, not by consent of the minority team or teams after debate, ventilation of grievances and criticism, but by "consensus", which is, alas, a very slippery concept.

Perhaps Pacific politicians have realised that a Legislature under responsible government is not primarily a legislative body; it is not meant to be the prime mover in legislation. Given the size of the populations they are serving, the scope of the matters of concern and the smallness of the Legislatures, it is possible to take administrative decisions and to arrive at policy if not by consensus - whatever it may mean - then after a degree of consultation and informal advice from Members unknown in the Parliaments of the large Commonwealth countries today.

Perhaps, too, notables in countries that have achieved Independence in fairly recent times have absorbed the awful lessons of non-responsible governments in West Africa and noted the resilience of responsible government in the small nations of the West Indes. Executive presidencies have been rejected. It must surely be contrary to the "consensual tradition" to vest so much power and authority in one man.

---

* See for example C.J. Lynch: "Three Pacific Island Constitutions", The Parliamentarian, Vol. 61, No. 3, July 1980, p. 133 at 140.

Central government is a recent phenomenon in most of the countries surveyed. Decision making at family or island level is desired, and devolution to "provincial" administration has been a pressing concern of governments in both Papua New Guinea and the Solomon Islands. Island Councils have been set up in a nation as small as Tuvalu. Traditional decision makers have been accommodated in the Upper House in Fiji and in special councils in Western Samoa, the Cook Islands and Vanuatu. But no country has been willing to abandon the idea of a strong central government to which traditional values and practices in decision making must in the end give way. In keeping with this position the financial initiative of the Crown or of the Executive has in all cases been preserved.

There are, therefore, strong common elements based on the Westminster model in all the Pacific Constitutions. These have been freely chosen by the several countries themselves, occasionally in the teeth of "expert opinion". So, the strong central government has in each case been made accountable to and responsible to an Assembly, not of traditional decision makers, but to one formed on a popular basis, except in Western Samoa where the franchise and eligibility for election are restricted to the heads of families. The Executive comes from, remains in and may be dismissed by the popular Assembly. The control of the Executive by the popular House is still the central feature of each of the Constitutions. It is apparent that the Executive is expected to work with Members of the Assembly, and in the only large House, that of Papua New Guinea, through a set of constitutionally guaranteed Parliamentary Committees.

In making the Executives responsible to the Parliaments, the draftsmen have concentrated on collective responsibility. Indeed, the form of words used has been such as arguably to destroy individual responsibility of a Minister to the House by sweeping his responsibility up into the collective responsibility of the Ministry to the House. Only in Papua New Guinea has provision been made for a motion of non-confidence in an indiviaual Minister. Given the political circumstances facing any Government in that country, it would be foolish for the Government to try always to rally round a Minister under special attack. It might well be wise to throw him to the wolves.

It is not obvious why collective responsibility was made to eat up individual responsibility. Perhaps it was simply a case of draftsmen misreading history and concluding that British Governments have always rallied around Ministers and cloaked them in collective responsibility. Perhaps it was because the life of a Minister was made to depend constitutionally on the Prime Ministerial will. Consequently, if a Prime Minister did not dismiss an erring or unpopular Minister, it was only right that the Ministry as a whole should stand or fall in the House with that Minister.

The primacy of the Prime Minister is another of the central common features of the Pacific Constitutions. He is, constitutionally, more than primus inter pares. Once he is in place, he effectively appoints and dismisses Ministers and they lose office when he does (except, technically, in Papua New Guinea). No affirmative vote of confidence is required in respect of the Ministry a Prime Minister recommends for appointment.

Even where there was a history before Independence or self-government of the Assembly electing the Members of the Executive Council, the Constitutions have been drawn to require the election by the Assembly of the Prime Minister alone. The more recent constitutions make explicit provisions for the election of a Prime Minister (or President) and detail the procedure to be used. In the "older" constitutions of Western Samoa and the Cook Islands, the election of the Prime Minister while a Parliament is in being is necessarily entailed by the obligations placed on the Head of State or Queen's Representative in appointing a Prime Minister. It has taken litigation to make this clear and to suggest a particular mechanism for the election.

The election of a Prime Minister has several advantages. First, it absolves the Crown from the thankless task of trying to put together a Government in a House of Independents or weak, multiple parties. Secondly, it forces the House to deal with the issue when there are party splits. Thirdly, it provides a replacement of some kind for the stability afforded by a party system. Fourthly, it avoids all the problems that have been caused from Nigeria to Fiji by attempting to write down in a constitution the conventional rules of the British Constitution, with or without modification, governing the appointment of a Prime Minister. Fifthly, the appointment of the Prime Minister becomes a non-justiciable issue, provided it takes place in the

Assembly itself, as Courts will probably not enquire into what goes on in the Assembly* even where an express provision to this effect has not been included, as it usually is, in the Constitution.

The election by the Assembly of individual Members to the Ministry has been seen, rightly I think, as being inconsistent with collective responsibility, productive of instability and unfair as likely to produce an Executive the Members of which cannot get along with one another and with the Prime Minister.

Only in Fiji and in the Northern Territory of Australia is the appointment of the Prime Minister left to the reading of the parliamentary position by the Queen's Representative or to United Kingdom conventional principles. In both jurisdictions party politics are well established. And, of course, the Northern Territory exists within a federation, the Commonwealth and State Constitutions of which all operate on wholly conventional principles.

Where the Prime Minister is elected, it is left to him to form a Cabinet that can command a majority in the House, or at least a stable minority to which may be attached floating support for individual measures. It will be his political skills, presumably an important consideration among the qualities that commended him to his Assembly colleagues, that will produce a stable government. If he fails, he will be put out of office.

Party politics have not proven necessary to the operation of the Pacific Constitutions. Indeed, they were generally predicated upon their absence, or at least their weakness. The critical provision of requiring an election for Prime Minister after each general election and the resignation of the one in office when Parliament first meets or within so many days of Parliament's first sitting was designed to ensure that the composition of the House would affect the Executive and to ensure that the Members had both the opportunity to choose a Prime Minister and the responsibility of choosing wisely. The constitutions seek to substitute for the stability of party support safeguards by limiting somewhat the circumstances in which the Legislature can put the Executive out of office.

---

* Edinburgh & Dalkeith Rly v. Earl of Wauchope (1842) 8 Cl. & F. 710; But compare the cases dealing with constitutionally prescribed formulae or majorities for constitutional amendment: R. v. Military Governor, N.D.U. Internment Camp [1924] 1 I.R. 32; A.G. for New South Wales v. Trethowan [1932] A.C. 526; Harris v. Minister of the Interior [1952] 2 S.A. 429.

The emphasis is always on the express motion of non-confidence as the triggering mechanism for forced resignation (usually dismissal), and for dissolution (where it is permitted). By inference mere defeats in the House on legislation or procedural motions do not require a Prime Minister to go. Nonetheless, conventional principles do still play a part. Some constitutions allow the Prime Minister to designate any vote as one of confidence. The defeat of the Budget in the Cook Islands saw the Government resign when a dissolution was refused. And it must still be the case that any Government, unable repeatedly to get its measures through, will have to go, especially when access to dissolution is unavailable. The alternative is chaotic government and a temptation to deal with all matters administratively away from Parliament.

The Papua New Guinea Constitution goes so far as effectively to guarantee a new Government a six months' life by forbidding the moving of a motion of non-confidence until the six months from its formation have elapsed. By requiring the constructive vote of non-confidence, one which specifies an alternative Prime Minister, the Constitution forces the House to a quite difficult decision and ensures some stability in practice despite continuing political ferment. Many such motions have been moved and debated (with all the accompanying "lobbying" in a House largely composed of "loose fish"); only two have been passed in eleven years. There is another aspect to the Papua New Guinea procedure which must give everyone involved cause to pause. The person named in the constructive vote of non-confidence only becomes Acting Prime Minister. He must then be affirmatively voted into office as if after a general election. All the "lobbying" could begin all over again.

Although party politics are not necessary to the operation of the Pacific Constitutions, they are not prevented. They are now common and seem increasingly to be taking over. Western Samoa and the Cook Islandds went from Houses of Independents to the two (or three) party system in twenty years. The number and influence of Independents is on the decline in the Solomon Islands. There are even groupings or embryo parties in Kiribati and Tuvalu. Papua New Guinea has parties but their number, looseness and dependence on individual personalities makes the Papua New Guinea Parliament strongly reminiscent of the House of Commons from the split of the Conservative Party over repeal of the Corn Laws until 1868, or, perhaps, more truthfully of the Eighteenth century House of Commons with its "connexions" clustered around prominent Whig politicians.

Nowhere do the parties seem to be as immutable as in the "old Commonwealth". The caucus system in the pattern of the Australian and New Zealand Parliamentary Labour Parties has not developed. Shifting coalitions are the principal feature of political life in Papua New Guinea, and to a lesser extent in the Solomon Islands. The apparent two-party system in Western Samoa and the Cook Islands is subject to fissiparous tendencies. Parties must be seen to serve some purpose. In a society as homogeneous as say Tuvalu, it would be hard to see what, except the age old tendency of men to divide on a major political issue, be it the French Revolution or the investment of the nation's foreign reserves. In larger and more disparate societies parties do allow choices to be articulated and made. They may, however, be the plaything of forceful personalities who themselves become "the issue" on which men form (and re-form) their allegiances. In a country such as Papua New Guinea with over seven hundred and fifty languages and many more tribes, and a bewildering array of sub-types within the Melanesian population, party must be seen as a means of building some national approach to ideas and policies transcending the extreme of parochialism. The introduction of party politics is, probably unfairly, blamed on Mr. Barry Holloway an Australian, now a Papua New Guinea citizen, who helped Mr. Michael Somare form the first, and always the largest party, the Pangu Pati, and who was successively Minister of Finance and Education in the several Somare coalition governments. If the Pangu Pati had not been formed, another would have, and then others in response. In a House of over one hundred Members any ambitious man needs a faction, just as he does within the perenially governing Liberal Democratic Party in Japan. The party "problem" and the unmanageability of the Chamber where no dissolution is possible has become such an issue that Somare has recently been advocating a constitutional amendment to forfeit the seats of those who change or abandon their party so that they will have to face bye-elections. One wonders if this was not one contributing factor to Somare's downfall late last year. The Members of the Parliament have repeatedly shown their aversion to unnecessary trysts with the voters.

The conditions of Papua New Guinea are so distinctive that they probably hold few lessons for the Northwest Territories in the matter of party politics. That party politics is a strengthening phenomenon in the other countries surveyed should give food for thought.

Just as parties are not necessary in the Pacific Parliaments, Oppositions are not either, although they exist everywhere except in Kiribati and Tuvalu, where there are clearly "ins" and "outs". An Opposition is expressly provided for in the Solomon Islands, as also a Leader of the Independent Group. Both are appointed by the Governor General with the advice of the Speaker.

With the exception of Papua New Guinea which is a large country geographically with a formidable terrain and has a substantial population, the Parliaments or Assemblies in the Pacific states are small, ranging from twelve to forty-five Members. These numbers no doubt lead to a collegial, even proprietorial attitude to government in general, including administration. The Members are necessarily close to their electors and localities. In such a situation it is simply not within the bounds of human nature to treat the Executive and the Legislature as institutionally opposed arms of government. Electors expect Members to lead and to do things. This may lead to what in the Western World would be called parochialism. But it can also be seen as the legitimate defence and support of local interests and the very stuff of politics. This was true of the Canadian Maritime Assemblies in the 19th Century. It may also be true of the Northwest Territories. Because of size, smallness of electorates and the scope of the matters both electors and Members are concerned with, Pacific parliamentarians, even where party politics have taken root, have shown an independent and resilient streak.

This independence and individualism has caused problems in Papua New Guinea where, however unmanageable it may be, Parliament can only be dissolved by the vote of the Members. The Members have repeatedly refused to vote for their own dissolution and the Constitutional Commission has recommended an end to the fixed term concept and the introduction of a power of dissolution on Westminster principles. The reluctance of the Members to vote for dissolution is not to be wondered at given the political carnage each election causes amongst sitting Members.

The Parliament of the Solomon Islands is also dissoluble only on the vote of its Members. An early dissolution is only possible in Tuvalu on a vote of the Parliament that the Prime Minister should recommend dissolution to the Governor General or when the office of Prime Minister is vacant and no one has

been elected to the office within such period as the Governor General, in his own deliberate judgment, considers reasonable. Dissolution is automatic after a non-confidence vote in Kiribati, but is not available otherwise. Only Fiji, Western Samoa and the Cook Islands have preserved anything like the conventional rules on the dissolution of Parliament. The problems posed by lack of recourse to dissolution and the fixed term concept should be considered in the Northwest Territories where, in effect, the Assembly can only be dissolved after Resolution of the Assembly or by the Governor in Council embarking on a most cumbersome procedure she would probably be advised by her Ministers to avoid. If government were to break down altogether, no doubt Instructions would be issued to the Commissioner to resume direct responsibility for administration.

It is possible that a fixed term or a term that can be cut short only by the Parliament itself fosters Independents and keeps parties weak. A supposedly principal prop of party discipline has been removed. One can, of course, doubt that the threat of dissolution is a very real threat in a conventional Parliament, for it depends on a Ministry being prepared to face defeat and deprivation of power, office and perquisites, just to teach backbenchers a lesson. Few Prime Ministers will cut off their noses to spite their faces. The trade-off for the assured but temporary independence of Members, as Papua New Guinea shows, may and and probably will be a change over or reconstruction of Governments, albeit under the same Prime Minister, along the pattern still holding in Italy and once carried to extremes under the French Fourth Republic.

It is fortunate that constitutional crises have so far only occurred in Western Samoa, the Cook Islands and Fiji where the reserve powers of the Crown (or Head of State) have been left pretty much intact. The reserve powers proved most useful in the Cook Islands in disentangling the mess created by a lacuna in the Constitution. The risks inherent in trying to reduce into writing unwritten parts of the British Constitution was once again demonstrated.

Perhaps constitutional crises will be rare in other Pacific states precisely because the later constitutions abandoned the practice of trying to reduce the conventions of the British Constitution to writing with or without slight

modifications. What was done instead was to specify precise powers and obligations, and precise machinery to operate in precisely defined circumstances. Any lacunae that appear to cause trouble will still have to be filled by conventional British principles to the extent they have not been made inapplicable by the texts of the Constitutions themselves.

Ordinarily, a state faces three choices as to the "conventions of the constitution":-

(i) not to put them in the constitutional document (Northern Territory);

(ii) to try to express them, which sometimes causes unintended results (Fiji), lacunae and litigation (Cook Islands);

(iii) to state new principles for operation in precisely stated circumstances. Unless this is done very carefully it can cause difficulties and not achieve the hoped for predictability and certainty. (Northwest Territories Legislative Assembly and Executive Council Act; Cook Islands)

In a way the Northwest Territories are fortunate. In the short term at least there is no option but to follow the first choice. The Assembly can not amend its own Constitution. Amendments to the Northwest Territories Act will be a long time coming. Given that the Assembly-in-Caucus actually sets the ground rules for responsible government and the Commissioner has been obliged by successive Instructions from Ottawa to fall in with the wishes of the Members of the Assembly as to constitutional arrangements, the opportunity exists to write a set of rules which are not immutable and which can be adapted. If an unforeseen circumstance arises, the Assembly Members, in effect sitting as a constituent assembly in their caucus, can decide what to do in light of those rules, and their spirit, or to overturn them altogether. Such an opportunity is unique.

V. THE ESSENTIAL CHARACTERISTICS OF RESPONSIBLE GOVERNMENT

I do not wish to essay a major treatise on this subject. It has been covered in some detail in the recent monograph Dr. Forsey and I prepared for the McGrath Committee.* (See especially Part II, pages 8 - 128.) It is only necessary here to isolate the salient features of the system, and to identify the minimal requirements for its operation. First, however, I wish to deal with two aspects of responsible government which, on reflection, were not emphasised sufficiently in the monograph. The first is the central place accorded to strong government in our constitutional tradition. It is for others to determine whether or not strong government is compatible, and to what extent, with consensus government as desired in the Territories. Certain it is that the draftsmen of quite recent constitutions have been conscious of the need for strong, central, responsible government in societies with long traditions of decision making of their own and in countries as apparently small and remote as the Solomon Islands, Tuvalu and Kiribati, and in a country as diverse in tribal, linguistic and cultural terms, and as formidable in geographic terms as Papua New Guinea.

The British constitutional model is still based on an intermittent parley or conference in Parliament between the Crown - the Government - as the directing and energizing element, and the representatives of the nation whose assent and acquiescence are essential and are only to be secured after full discussion. The representatives of the nation need not necessarily be representatives of the people, as in England and Britain before the Reform Bills, or as in Western Samoa today. The whole stuff of politics is action and reaction between the Ministry and Parliament. In most jurisdictions, but not all, this has been reduced to action and reaction between Ministry and Opposition, for upon the Opposition under a party political system has devolved most of the original critical functions of Parliament.

Parliament never was a body specially and primarily for making laws, even though colonial legislatures tended to be more after that pattern because of the pressing claims of local concerns, Colonial Office emphasis on deferring to local opinion in matters of local concern, and the opportunity legislation offered rising politicians to make their names. Even so, the

---

* Special Committee on Reform of the House of Commons, 1985

function of legislation has always been predominantly executed by the Government which has always taken the major initiative in ordinary, public legislation and has insisted on its monopoly of the initiative in financial matters.

> "The main task of Parliament is still what it was when first summoned, not to legislate or govern, but to secure free discussion and ventilation of all matters, legislative or administrative, as the condition of giving its assent to Bills, whether introduced by the Government or by private members, or its support to Ministers."*

This does not strike me as being far from a consensus model.

L.S. Amery was right to note** that the essential nature of the British Constitution has been misinterpreted consistently by writers from Montesquieu onwards. The misinterpretation led to the theory of the citizen voter, or the majority of the citizen voters, as the antecedent and ultimate source of authority which is really held by the Sovereign, though effective power may have been first diffused through responsible Ministers and then located elsewhere in a Prime Minister and a Party. The misinterpretation was eagerly taken up by writers of the dominant Liberal, individualist school in the 19th Century. Bagehot was the most popular of these. Interpreting the parliamentary situation of their own time in the light of their general philosophical positions, these writers persuaded themselves that the Constitution had become in fact what they thought it ought to be, namely, a system based on the delegation of authority by the electorate to a House of Commons which, in its turn, delegated the day to day exercise of that power to a Cabinet which was, in substance, only a Committee - to use Bagehot's phrase - of the parliamentary majority. Bagehot became the prevalent text and his theory the prevalent theory.

In reality this theory was a fallacy based on a light administrative and parliamentary load in an age of laissez-faire, a high volume of private legislation (canals, railways, municipal corporations) and a prolonged freedom from external threat. (No one would have presumed to describe William Pitt the Younger's Cabinets as Committees of the Commons.) There was almost unlimited time, even in a short Parliamentary Session, for eloquent debate

---

* L.S. Amery, "Thoughts on the Constitution", 2nd Edn., Oxford University Press, London, 1964, p. 11

** Ibid, p. 13

on major issues. There was a limited franchise and even its extension coincided with or caused the fissuring and realigning of parties which resulted in a quite "undisciplined" House and frequent Government defeats and even upsets. It was not hard to conclude that it was Parliament that governed and that it did so in response to positive and negative wishes of an actively interested electorate.

All these footings were swept away by the progressive extension of the franchise, the accompanying and inevitable increase in the volume of government work and the increasing intervention of government in economic affairs. The work would never have been done and the interventions never carried through without a restoration of discipline in the House. That discipline was accomplished by the party system, a system having somewhat different manifestations in different countries. It is possible that discipline may flow from other sources, but so far none has demonstrated that it can consistently produce the necessary result. Our century has seen the reassertion of the tendency in our constitutional order for the government, as such, to reassert itself whenever the opportunity or need arises. Even where legislatures have been preoccupied with self-assertion against the colonial power and its local representative, the achievement of responsible government, self-government or full Independence has led quickly to the reassertion of the authority and power of the government in and over the legislature.

It is a mistake to write constitutional prescriptions based solely on a reading of current political circumstances, which usually means a generalisation about the political circumstances of the near to intermediate past. This must be especially guarded against in the Northwest Territories which have only just achieved a fully representative and independent Assembly and a full Ministerial system of government to replace the Commissioner's rule of quite recent times, and have yet to achieve either full internal self-government from the colonial power in Ottawa or responsible government in the full sense. The constitution has always been a balance between initiative and control. There has never been a polity yet in which the Parliament has governed (although some, such as the Long and Rump Parliaments, tried). The starting point and mainspring of action has consistently been the Government. The Government as an entity has never anywhere fully been made a committee of the legislature, although experiments along such a line have been tried, as has been seen,

where the Crown, as represented by the Governor, still exercised a real and powerful role in both policy and administration. In those independent jurisdictions in the Commonwealth where the choice of executive has been formally committed to the popular House of the Legislature, the choice is of the headman only, who selects his colleagues and is the mainspring of the Government and the Leader in the Parliament of a Ministry collectively responsible to that Parliament.

In the usual Westminster system the voter cannot choose either the kind of government or the kind of representative he would like if he had a free choice. There is a Government in being which he can confirm or reject, but only in favour of the alternative team or one of the alternative teams capable of securing an alternative majority. Other small teams or parties may exist, and may have influence, or may be in transition either to real team status or to political oblivion. Where, however, in the atypical model, teams do not exist, or are weak and non-cohesive, or no team can hope to capture the Government on its own, the voter's choice is really even more limited for he cannot even confirm or reject a Government or reasonably hope to ensure its replacement by some particular team of his liking.

With us government is the first consideration. If it were not so, even in the Northwest Territories, local politicians there would not have striven so mightily to capture it and wrest it from officials and finally from Ottawa's representative, the Commissioner. The way to that end was a fully elected, representative Assembly and the inevitable movement, given our history, to harmonise the executive with that Assembly by the practices of responsible government. But there can be no mistaking the goal. It was to take control of the initiating and moving power in the governance of the Territories.

The great advantage of the party system is that it usually ensures stability for a government dependent from day to day on the support of the majority in Parliament. It also ensures stability when that government fails to retain the support of that majority either because of an election or for other reasons. If the stabilising force of party politics is to be absent, some other source of stability must be found, or, at the very least, the sources of instability must be controlled, limited and restricted, as we have seen they have been in recent Commonwealth Constitutions.

It is precisely because the 19th Century Liberal apologists failed to realise that government is the chief end of political life and that the government was the mainspring of it, and failed to recognize the sources of stability in the British Constitution, that they created the mischievous belief that it is possible successfully to combine the British form of the Constitution with the still prevailing continental conception, owing its origins to the French Revolution, that political power is a delegation from the individual citizen through the legislature to an executive dependent on and a committee of that legislature. This is what Disraeli dismissed as the "Anglo-Gallic Scheme". That concept, implying choice of party as an end in itself, has often led to multiplication of parties, proportional representation by party list, the rights of legislatures to initiative in all matters, including finance, fixed terms, and the denial to the government of the power of dissolution. There has, inevitably, been a reaction against the ensuing instability and the consequent creation of artificial restrictions, barriers and restraints, in order to achieve in practice a system of "ins" and "outs". A system of government, not in and with Parliament, but by Parliament, is bound by its very nature to be unstable and subject to the continuous shifting and shuffling of numbers and more noticeably to the influence of personal ambitions. Sometimes this will be the price for maintaining a free system and the avoidance of dictatorship, but it can hardly be ideal. On the other hand, the rise of dictatorships and one party governments within the British Commonwealth, and elsewhere, has been largely the inevitable consequence of the ineffectiveness of constitutions which reproduce the outward form of the British Constitution without the spirit of strong and stable government and without the alternating of governments governing by consent, which are of its essence. The stress in constitution making, if it is to follow the British model, should be on strong and stable government first, and then the reconciling of that imperative with public opinion, popular consent and traditional ways. The history of the Commonwealth in this century has unfortunately been the transmission of the forms only and until quite recent years there has been little effort put into thinking out alternative forms which could preserve the real character of the British Constitution adapted to wholly different conditions, either by supplying alternative sources of stability or counteracting sources of instability. In retrospect, it says much for the validity of responsible government as a construct that it has transplanted so readily and survived in so many different climes.

One need not, of course, try to follow the British model at all. There is no doubt that democratic government based on delegation can be made to work (even if roughly in places) but the delegations from the people to the Executive and the legislature must be different or the Government must enjoy a real measure of independence for a reasonably long period. The Constitution of the United States of America is marked by separation of powers. Switzerland enjoys an Executive directly elected by the Legislature and reflective of its composition, but that Executive once elected is not responsible to it and enjoys independence for the lifetime of the Legislature.* What cannot work, as Mill admitted, and even Cromwell concluded, is government by an elected assembly or by a body of men subject to continual direction, dictation and interference by such an assembly. I have taken as given that a United States or Switzerland type government in the Territories is simply not on, at least for the present. Consequently, the assessment of the needs of the Northwest Territories must be made within the confines of a democracy by consent, and not by delegation. Moreover, the Northwest Territories' traditions of "consensus" would seem to conform to the pattern of government by consent and not to that of delegation.

None of this gainsays the efforts that are made in many jurisdictions to make the Government reflect the Legislature. But on examination these efforts are genuine only in the rarest of cases. What they usually ensure is that once the "in team" is ascertained the Executive reflects the wishes of the majority of that team. Such is the caucus system in Australia and New Zealand, where the members of the parliamentary Labour parties elect the members of the Ministry. The Leader, also so elected, allocates the portfolios and can only on occasion, and with difficulty, ensure the removal of a colleague from the Ministry. In Canada, on the other hand, the choice of Leaders by the convention method ensures that the Leader has untramelled power to select the Ministry so that it need not in any sense be representative of even the majority in Parliament. Especially in Canada and her provinces the Premier is much more than primus inter pares and enjoys far more power than the President of the United States of America so long as he does not actually forfeit the allegiance of naturally deferential and loyal

---

* There is, perhaps, a third solution to conflicts between the Executive and the Legislature, a model based on the Constitution of the French Fifth Republic. Yet that Constitution relies heavily on government by Executive Decree which would seem to be as much at variance with consensual traditions as with responsible government.

colleagues in the Ministry or of his followers in Parliament. The position of the Government Leader in the Northwest Territories, however, is quite different, as has already been seen and, unless customs arise to the contrary effect, he must be very much at the mercy of his colleagues and of the Assembly. It would not be surprising if thoughtful people in the Territories were reluctant to import a system and status from the South which would afford the Government Leader so much power, the very antithesis of a consensual arrangement, and a system that has tended to blight Canadian political life by leaving Prime Ministers and Premiers in power for far too long.*

Under the traditional Westminster system the House does not appoint but accepts a Prime Minister and Cabinet. In Commonwealth constitutions of the last twenty-five years experiments have been made with the Legislature selecting a Premier, but never the whole Ministry. But many of those constitutions try to hedge the Premier around, once elected, with safeguards so that his position approximates that of a Premier under the Westminster system with a fixed party backing. They also try to force the Legislatures to make responsible choices of men capable of putting together a team of Ministers that can carry the Queen's business. The ideal of strong government is still pursued. And it is still true that the particular composition of the Ministry chosen may bear little relation to the wishes and views of the Legislature at the time if it were free to choose the Ministers individually.

Even within a traditional Westminster system, a new government taking office can imitate the schemes of new constitutions or of European models. When, after Mr. Miller's defeat on the Address in Reply, Mr. Peterson formed a Liberal administration in Ontario in 1985, dependent on N.D.P. support, he began by seeking and gaining a vote of confidence from the Assembly. This was an entirely unnecessary but doubtless reassuring procedure. With that vote under his belt, as it were, he settled into the traditional pattern of leading, indeed driving, the Legislature, despite the odd defeat here and there, through a very heavy legislative programme. Government and Parliament in Ontario, closely intertwined and harmonized though they are, still in 1986 exist as separate entities, fulfilling the two distinct functions of leadership, direction and command on the one hand, and of critical discussion and examination, and ventilation of grievances on the other.

---

* For the development of this argument see Professor Frank MacKinnon's submission to the McGrath Committee, Special Committee on the Reform of the House of Commons, 1985.

The second characteristic of responsible government which was not adequately explored in the monograph for the McGrath Committee is this: responsible government developed and has adapted best in homogeneous societies. There is one apparent exception to this: Papua New Guinea. However, it is perhaps because of the extreme of heterogeneity in that country, the absence of any dominant tribal groups, and the unifying force of a fairly recently adopted Christian faith, coupled with the most elaborate constitution in the Commonwealth, an utterly fearless judiciary, the strong personal ambitions of not two but four or five leading politicians and the dedication of at least the three most relisient of them to the precepts of parliamentary democracy that responsible government has flourished there in a form last seen in the United Kingdom between 1832 and 1867 and in some of the Australian colonies before the turn of the Century. Such a combination of factors has not existed in Africa, certain European countries or even in some Canadian provinces where responsible government has failed to take root and flourish and one party domination has been the prevailing condition.

The British Constitution grew out of its local environment. Its history has created a complex of emotions which regulate the conflict of parties by which the complexion of Parliament and the Government, their relations with each other and the electorate are determined. There have not been in the United Kingdom, with the exception of the Irish Nationalists, whose emergence and presence all but wrecked the Constitution and may well have accomplished that end save for the outbreak of the Great War, a collection of fluctuating political groups, having purely local or regional objectives, or based on tribal or linguistic divisions or other communal factors. So in Canada parties strive to be national and to rise above these sorts of division for the same reason. Party overrides, or at least blurs, divisions on racial, linguistic or religious lines. Without such restraint parliamentary responsible government will not work. Britain has enjoyed three centuries of freedom and tolerance flowing from the Civil War, the Restoration and the Glorious Revolution. This is a rare heritage and unfortunately some peoples (or rather their leaders) have not been prepared to adopt it as their own once Independence has been achieved. A sense that the political fray is nonetheless to be concerned with justice and fairness has pervaded all political activity in Britain, at least from the late 18th Century when the great movement for the abolition of

slavery and the slave trade gathered strength. Parliamentary institutions work well in Britain because they have worked well for centuries. They are capable of quite remarkable regeneration, as in the re-assertion of the power of the British House of Commons relative to the Executive in the last fifteen years.*

All this has come about despite quite fierce party conflict. What is the key? Sir Ivor Jennings,** who knew and understood more about the British Constitution than any man before or since, who wrote constitutions for new states and was well versed in colonial government, having nursed Ceylon from Crown Colony rule to Independence, had no doubt that the party system in Britain had enshrined reasonableness, tolerance, restraint of the majority, the idea of Buggin's turn, the swing of the pendulum, and the opportunity for the minority to be the majority. This was because the political parties (except for the Irish Nationalists) were not founded on factors which were not matters of opinion. They eschewed the foundations of race, religion, tribe, cast, dogma or overthrow of the existing order, and concentrated on matters on which reasonable people could disagree, on matters on which opinion can change. Whether this happy state of affairs is immutable remains to be seen. It may be challenged quite soon by the Militant Tendency which has prompted Mr. Kinnock to unusual efforts to re-homogenise the Labour Party. Responsible government can not function if either it is or is thought necessary for democracy that the country should be rent by fierce conflict between classes, colours, tribes, racial groups or religions.

It should, however, not readily be accepted that responsible government is a fragile plant. Despite its obvious failures, especially in parts of Africa, it continues to be practised in a very disparate array of jurisdictions from the large (600 million) to the tiny (2,000), from societies "advanced" to those continuing in a largely "pre-colonial" condition, from the entirely homogeneous to those held together by few obvious common threads. It has survived transplantation into federations and the rise of plural societies. It has even shown itself resilient in the face of communalism, as witness Canada itself, or Ceylon after 1947 but before the uprooting caused by Buddhist zealots and the unwillingness of one of the leading political actors, Mr. Solomon Bandaranaike,

---

* To appreciate the extent of the re-assertion compare the description in the Forsey - Eglington Monograph for the McGrath Committee, based on Professor Philip Norton's work, with the already anachronistic leading article in "The Economist" of 5 November 1977: "Blowing up a Tyranny" in which the House of Commons was described as the "kitchen maid to two alternating party political tyrannies".

** The British Constitution, Cambridge University Press, 5th Edn, 1966, page 29

and then his widow and nephew, to abide by those principles of self-restraint in the exercise of power which alone can ensure the consent of all the governed. Without that consent responsible government must wither, to be replaced by a more direct and autocratic means of imposing the executive will. Without practised self-restraint by politicians responsible government must perish. The 1975 constitutional crisis in Australia illustrated clearly what will happen when politicians cease to act in a restrained fashion in accordance with well understood customs, even if those customs are nowhere written down. It remains yet to be seen whether responsible government will survive that crisis. If it does it will be because Mr. Whitlam, though protesting bitterly, accepted his dismissal, did not contest it and vacated office because he knew that to break both the letter and custom of the Constitution would bring the whole edifice down. If it does not survive, it will be because of the constant chipping away at the constitutional order he and his bitter acolytes have indulged in ever since. This is the great constitutional question bedevilling Australian political life today.

Responsible government depends then on a paradox. The paradox of a strong government acting in a self-restrained way in accordance with principles that are open to full debate and modification, and willing to make way for an alternative government in accordance with public opinion, which gains expression in a society willing to tolerate change in government and policy and not to divide fatally on racial, religious, tribal or communal lines.

I have seen or heard nothing that leads me to doubt that the Northwest Territories desire effective, purposeful government, governing by consent after full, free discussion and debate. I can not judge from so great a distance and with no direct knowledge of society, events and personalities whether the Northwest Territories affords fertile ground for responsible government or not. Some potential problems are obvious, even to me: the split between East and West, the racial differences, the extremes in modes of livelihood and so on. And yet by emphasis on consent, and the concerted efforts made through the caucus system and the Committees to achieve it, an equivalent of homogeneity is arrived at and self-restraint is clearly a decided factor in everyone's thinking. It may also be the case that it is the tradition of all non-white elements in society to arrive at

collective decisions by agreement after debate, in which event a strong homogeneity of political approach does exist in all relevant communities in the Territories. The communalism* which exists in the Territories does not approach the tribalism of African states. The effect of postponement of the division of the Territories is for others to assess. To date the consent of the governed has not been seriously disturbed by the actions of either the local representative institutions or the local executive. Spiritual forces are, if anything, a uniting rather than a dividing factor, as in Papua New Guinea. There seems to be no reason on social grounds to conclude that responsible government can not work. But it will not survive the ruthless pursuit of ambition by politicians in the Territories anymore than it can in any other society.

Having covered what may be thought of as the fundamental conditions for responsible government, its particular characteristics may stand out more clearly.

1. Because responsible government provides strong, executive-led government, politics is about gaining office under the Crown and control of administration. If the basic idea of politics is simply that a representative body should influence policy or direct or act independently of office holders, responsible government can not exist and considerations of the confidence of the representative body in the office holders is an irrelevant waste of time.

   It would seem that Assembly Members in the Northwest Territories do see politics as being about office because of the concerted effort that has been made to put Members into official positions in charge of Departments and to exclude the Deputy Commissioner and the Commissioner from the political executive. On the other hand, there seems as yet no vying for office in the sense of teams competing to achieve a monopoly of all offices for a team's members. There is, however, a vying for place designed to secure an equal distribution of political offices as between eastern and western Members. The satisfaction of this political imperative has produced something of a "grand coalition" government in which the vying for control of all offices has, at least temporarily, been avoided.

---

* I have taken communalism to mean the belief that, because a group of people follow a particular religion, or belong to a particular racial group, they have as a result common social, political and economic interests.

2. Responsible government is merely a way of ensuring that the Queen's government can be carried on in the face of the powers of the representative body to grant or to withhold Supply, to censure the Queen's Ministers (as a substitute for impeachment), to refuse to pass or to amend legislation, and to initiate and pass legislation not trespassing on the Crown's monopoly on the initiation of money matters. The method of harmonizing the Crown's chief power in government with the rights and powers of the Legislature is simply to ensure that Ministers do not serve for a term, but only until their usefulness is exhausted and they are no longer able to carry the representative body with them.

   The Northwest Territories has in a very real sense adopted the idea of Ministers serving for a term of four years or perhaps two years. There has been little concept yet of Ministers exhausting their usefulness, partly because there seems little idea of the Executive having a life and purpose other than those of the Assembly and partly because the Ministers have apparently acted in a way that has not unduly upset the Assembly. The one serious situation of incipient discord was taken care of, as it were, in anticipation, by the decision to hold a "mid-term review" of Ministerial appointments in the current Assembly. As this "review" took the form of an entirely fresh election of Ministers, the day of clash between Ministry and Assembly has been postponed.

3. Responsible government is not government by Parliament, or by a Committee of Parliament, but by Ministers, appointed by the Crown, who have a duty to lead and to direct Parliament and the people in accordance with the Ministers' own collective judgment and conviction. Responsible government is but a series of conventions under which the Legislature enforces continual accountability on the Ministry without exercising a continual control of either administration or policy, and without embarking on government itself. Responsible government, therefore, involves a healthy tension between the right of Ministers to govern in discharge of the Sovereign's trust of governance for the people, and to be sustained by the representative House of Parliament, on the one hand, and the right of that House to refuse to sustain the Ministers on the other. The domination of either the Ministry or the House over the other is undesirable.

The Ministry in the Northwest Territories is at present made up of creatures of the Assembly. The Ministers are not received by the Assembly (albeit from amongst their own number); they are created by it. They have no right to be sustained by the Assembly or to appeal against it to the people. The formulation of a collective Ministerial judgment and policy can only be achieved with great difficulty.

4. Responsible government means executive government by Ministers accountable to the popular House and bound to retire from office when the support of that body is lost. It requires action by the Sovereign or Her Representative in accordance with the advice of the political executive in office,* and that the Sovereign's business must be carried out by those in whom the House has, and from whom it can withdraw, confidence. Responsible government is a method of arranging the relationship between the Legislature and the political Executive such that the former can get rid of the latter, subject in many jurisdictions to the right to apply to the Crown for an opportunity to secure a Legislature of a different view. The Ministry as a body must be removeable if it cannot carry the Crown's business and successfully defend its administration in the Legislature.

   At the moment this basic proposition applies but imperfectly in the Northwest Territories. There are no recognized procedures for forcing the retirement of the political Executive from office. There may be an incipient system of periodic review half-way through each maximum life of the Legislature. A responsible government rests on the confidence of the popular House, which may be withdrawn <u>at any time</u>. The provisions of the ultra vires sections of the Legislative Assembly and Executive Council Act dealing with the Executive Council may suggest that this is the case. Practice as yet belies it. The concommitant resolution by dissolution is effectively denied to the Northwest Territories Executive.

5. If the political Executive does not rest solely on the need to retain confidence of the House, on a continuing basis, then there is not responsible government, but government by delegates for a term. The latter really seems to be the Territorial way.

---

* Ivan Rand: "The Canadian Constitution" 38 Canadian Bar Review, 135 at 137

6. The political Executive, the Ministers, must be Members of the Legislature and preponderantly representatives of the people from the popular House, in keeping with "the great maxim of our constitution, that the people may be represented and the Crown served by the same individuals. There is a fusion and reconciling of antagonistic forces."* They must be able in some circumstances at least to appeal to the people against an unworkable Legislature.

Now that the Commissioner has withdrawn from his last direct responsibilities for administration, the Ministers are all representatives of the people and Members of the Legislature. They can not, however, appeal to the people against an unworkable Legislative Assembly. The power of dissolution lies effectively in the hands of the Assembly itself. This situation only obtains in Papua New Guinea (for the first four of the five year life of a Parliament) and in the Solomon Islands. They both appear to have responsible government, although there is strong movement in Papua New Guinea to do away with the limitations on the dissolution of the Parliament and to confer on the Head of State a power of dissolution on the traditional pattern. Nevertheless, one can see that limitations, even severe limitations, on the right of Ministers as a body to appeal to the people do not appear to be wholly incompatible with responsible government. Whether the Ministers, as a body have <u>any</u> access to dissolution in the Northwest Territories is, however, a real question.

7. The control of the House over a responsible government rests on the power to refuse Supply, to withhold consent from legislation, to express in a direct way the House's want of confidence, and to demonstrate by rebuffs on procedural motions that the House denies the Ministers the ability to carry the Queen's business. Any of these avenues of control are technically open to the Assembly of the Northwest Territories. They have simply to be used. Practice so far suggests that they will not be the preferred instruments of securing Executive action consonant with the Assembly's wishes. The periodic review of Executive membership, and the committee system of dealing with draft Bills, are really mechanisms for solving conflicts between a Legislature and a separate and

---

* James Stephen, 21.6.1847, C.O. 323/63, quoted A.C.V. Melbourne, Early Constitutional Development in Australia, University of Melbourne Press, 1963, p. 285

and fixed Executive, an example of what Lord Hankey called diplomacy by conference. The final harmonization of Legislature and Executive has yet to occur. The safety valve of dissolution is for all intents and purposes missing.

8. Responsible government, and the requirement of confidence, settles the relationship between the Executive and the House by putting the ultimate control of the relationship in the House. It necessarily presupposes that the Executive has a different role and purpose from that of the House, although liable to eviction by the House, and that the Executive is not a delegate of, or a body composed of delegates of, the House, anymore than the House is made up of delegates of the electors.

The Ministers of the Northwest Territories Government are in a real sense delegates of the Assembly, not servants of the Sovereign holding their places in an Executive which may collectively be removed by the Assembly. The method of selection after a general election, and the idea of a mid-term "spill" and re-selection confirms the delegate status and detracts from the separateness and collectivity of the Executive.

9. The membership of the popular House of the Legislature should be brought into accord with the popular will by periodic elections, thus making the Executive, through the continuing need to maintain that House's confidence, itself dependent on the periodic judgment of the electors.

While the electors of the Northwest Territories can bring the membership of the Assembly into line with the popular will every four years (and perhaps less if the Assembly so wills), they can not in any real sense pass judgment on the Ministry. Those who have Ministers as their Members may defeat them, but the popular will of the whole Territories can not express itself on the Ministry as a whole. This is true whenever there are no parties, or where governments are constituted by shifting, loose coalitions of parties or of parties and Independents. It may account for the trend away from "uncommitted" members even in Parliaments where there were no, or loose, parties, before responsible government was adopted. Responsible government does not require

parties. They are not a condition precedent to its adoption. But they do seem to be a consequence that flows from Cabinet or responsible government.* If parties are to be rejected on principle, then responsible government would seem to be a risky form of government to adopt.

10. Responsible or Cabinet government, being based on common sense and not on general and fixed principles, is designed to solve particular problems and is capable of quite considerable adaptation. It does not come about by Act or Parliament or even by alteration of institutions. It comes about by an adjustment of the political Executive which adopts a collective posture, and is willing to depart from office together when no longer able to carry the Crown's business in the popular House. Collective responsibility of the Executive to the House can be prescribed in a constitution but still not function, especially as Courts can rarely question or interfere with the processes and procedures of the Parliament.

In the Northwest Territories responsible government is nowhere prescribed. It will not require any formal changes, with the possible exception of a letter from the Minister in Ottawa to the Commissioner that he should in his relations with the Assembly and his Ministers govern himself in accordance with the well understood principles of responsible government. It will require a political decision by the Members of the Assembly that the Ministers can be forced to retire <u>as a group</u> at any time the Assembly has no further confidence in the collective administration or in the Government Leader.

11. There must be a policy-making body of Ministers bound to give the Crown unanimous advice, the Ministers sitting in the Legislature but controlling as political heads the several departments of the civil service. The Ministers enjoy a monopoly on tendering advice to the Crown or Representative, but enjoy it only so long as they do not find themselves opposed by a majority of the Assembly who wish them out of their offices in virtue of which they enjoy the monopoly of advice. There must be a way in which that wish can be expressed and given effect to by the installation of an alternative set of Ministers.

---

* Sir Ivor Jennings: The Approach to Self-Government, Cambridge University Press, 1956, p. 160

Experience will tell whether or not the Northwest Territories Ministers can develop as a policy-making body. At the moment there is no generally agreed way in which the wish of the Assembly to put the Ministers out, and to install others in their place, can be expressed, except at fixed intervals. If the Ministry is not a success, this lack of a procedure ensures instability, not stability.

12. The political Executive is accountable and answerable not only for the Budget, money measures and legislative proposals, but also for the whole range of its administrative activities. The Ministry can continue in office only so long as they can secure passage of the appropriations necessary to carry on the programmes they desire, only so long as they can secure the passage of their basic legislative programme, only so long as they can turn back any censure of policies or administration (which it is not decided to lay on the shoulders of a responsible Minister who is to be sacrificed), and only so long as they retain the general support of the popular House for their competence and handling of any and all the myriad of administrative acts which make up modern government. Ministers are responsible for all executive acts, save the exercise of the reserve power of the Crown, and in respect of those, Ministers who continue in office or those who replace them assume responsibility.

The essential functions of a Ministry or Cabinet under responsible government are:

(i) formulation of general policy;
(ii) ordering of political priorities;
(iii) co-ordination of departmental policies;
(iv) settling of money priorities;
(v) settling the terms and content of draft legislation;
(vi) deciding on areas of departmental policy where Ministers have doubt, have run into trouble or are fearful of political consequences;
(vii) acting as a court of appeal where two or more Departments differ as to matters which affect them both or all.

The First Minister must keep his hand on all these functions and so exercise some oversight of all Ministers and Departments.

If the Ministry of the Northwest Territories has a legislative programme and can act cohesively, it is yet to be subjected to

the constant test of confidence responsible government entails. A biennial re-election of the Executive Council is not the same thing.

The very recent achievement of a Ministerial form of government and withdrawal of the Commissioner from an active role in administration may mean that there is as yet an imperfect awareness of the completeness of the Ministry's accountability to the Assembly and the full range of its obligations if responsible government is adopted. On the other hand, the awareness may exist already, and on both sides, and be leading to reluctance to take the plunge. The big question in a non-party Ministry with no real First Minister must be how to cope with overlapping by Departments, encroachment by Ministers on each other's turf, competition between Ministers, gaps between departmental policies, application of inconsistent principles and the formulation of major Government policy.

13. The Ministers must combine together as a body and stand and fall as a unit. The confidence of the House can not be tested or determined if there is not one Ministry and one policy. The temper of the House can not really be measured if the merits or failings of the Ministry can not be weighed as a body and by way of comparison with an alternative unit or alternative units that might be formed from the Members of the House. Consequently, the expression of censure or want of confidence in one Minister's administration of his own department's affairs may be (but need not be) treated as censure of all.

In practical terms Ministers combine together because they are appointed, and can be dismissed, on the recommendation of the chief amongst them. But in the Northwest Territories this is not so. Each Minister owes his position to his own independent base of support in a geographical caucus and in the Assembly as a whole. There need not be any combining together, any source of discipline or indeed a common policy on anything. All these features may be present coincidentally but need not be. There is no team to be tested. And there is no reason whatever why the censure of one Minister should ever be seen as a censure or want of confidence in all the Ministers. The contrary would appear to be the logical outcome of the present method of staffing the political Executive.

14. Ministers must be loyal to a collective policy line and to one another. If they are not, they can in the end be obliged to apply for permission to resign from the Crown's service or can even be dismissed. A Minister does not enjoy the luxury of the member of a committee, to be a perpetual dissenter or to be a known dissenter on a particular issue. This is not the situation in the Northwest Territories where the Ministers owe their positions to election by the Assembly and not to appointment on the recommendation of a Chief Minister. Whatever undertakings they give to one another on taking office may be apt to evaporate under pressure of events, and are unenforceable.

15. Items 13 and 14 are but particular aspects of the idea that collective responsibility involves political unanimity once a decision is reached, a common responsibility to the popular House and submission to a common head. These are the common threads of all constitutions based on responsible government. All Ministers must accept and defend the Ministry's decisions and vote for them in the House. Solidarity is the keynote.

In the Northwest Territories there is no one who can enforce solidarity, no submission to a common head, no reason that there need be political unanimity or even common responsibility. Ministers have even abstained when in the Committee of the Whole recommendations have been made for spending than ran counter to the Ministry's Estimates.

16. The precise meaning of "collective responsibility" is hard to state, although the essence is clear enough: "if the House disapproves of the action of the Government, or any part of it, the House can express its lack of confidence in the Ministry and compel it either to resign or to face an election".* If the Government's defence is to be effective differences must not be made public and attacked Ministers can not often be left to defend themselves. Attempts have been made in Commonwealth Constitutions of the last thirty years to state the principle of collective responsibility by elaborating upon the simple statement that the Ministry or Cabinet is collectively responsible to the popular House. These attempts have not been successful for they have tended, in trying to state the terms of the collective responsibility

---

* Sir Ivor Jennings: The Queen's Government, Pelican, London, 1957, p. 124

of Ministers, to destroy their individual responsibility. Papua New Guinea has avoided this by not reducing conventions to writing and by expressly providing for three types of motions of non-confidence, in the Prime Minister, in the Government and in an individual Minister.

> "It is wise not to attempt to define in a constitutional document what exactly collective responsibility means because the outlines of the concept are so vague and blurred. It can be described at a high level of generality; it can be illustrated by specific examples; a neat but comprehensive set of propositions can not be devised."*

17. A politically homogeneous Executive - in short a well-led team - has been found to be necessary to ensure political control of the administration. The civil servants may run the machine, but somebody must control each of the branches in order to ensure responsibility to the House and thence to the electorate. Experience has shown, as recently as in the 1930's in Ceylon, that it is impossible to have a solely departmental government. Lord North, who tried it on behalf of King George III, dismissed it finally and contemptuously as "Government by Departments". Not only the departments but the unifying and co-ordinating hand must be responsible to the House. He pledges his colleagues and his supporters in the House.

    The Government Leader in the Northwest Territories is not in a position to pledge anyone but himself and must depend on sheer force of personality to co-ordinate the several departments of state and forge a Ministry policy. Equally, an individual Minister is not in a position to pledge his colleagues on matters falling within his administration.

18. The necessary first step in the formation of a Ministry is the appointment or designation of its principal member, being the one who can command the confidence of the Assembly. There is some diversity of practice throughout the Commonwealth as to how that principal member is selected. The principal Minister must be more than the Chairman of a Committee; he is the real head or leader of the political

---

* S.A. de Smith: Constitutional and Administrative Law, 3rd Edition, London, 1977, p. 162

executive. He has great powers, but they are far from absolute. When the political weather is calm, they are not needed and appear overwhelming, almost overweening. When it is rough, they are tested and limited by the need to arrive at a common policy. He "is not a democratic despot but remains ultimately answerable to the people through Parliament".* In 1803 Pitt the Younger spoke of "the absolute necessity there is in the conduct of the affairs of this country that there should be an avowed and real Minister, possessing the chief weight in Council and the principal place in the confidence of the King".**

This is not the position in the Northwest Territories. There may be fear of such a chief Minister, especially when the powers of First Ministers elsewhere in Canada are contemplated. It should be pointed out, however, that no First Minister can expect to get his own way on everything. Moreover, the factors leading to the aggrandisement of a Leader's power Dr. Forsey and I set out in 1985*** do not apply: there are no parties and there is not a hopelessly overclogged government. There may now be something of a vacuum in the Territorial Government waiting to be filled. The co-ordinating power of the Commissioner has in recent times been removed. So far it has not been replaced.

What will be important to ensure is that any First Minister in the Territories remains answerable to the people <u>through the Assembly</u>. This will entail, in the event that party politics arrive, a very hard look at the way in which parties choose their Leaders. There is no gainsaying the fact that the Convention method used in Canada gives a Leader who is also First Minister a far greater power and authority over the Party and its Parliamentary followers than is enjoyed by a First Minister in, say, Britain or Australia. On the other hand, the power of the Prime Minister of Canada is obviously limited by regional factors and by Quebec. It may be that a similar limitation would affect a Chief Minister of the Northwest Territories while they remain undivided.

---

* The Economist, 12 April 1986: "Walter Bagehot: A most agreeable good fortune"

** Quoted Kenneth Mackenzie: The English Parliament, Penguin, 1965, p. 86

*** See Monograph for McGrath Committee, pp. 100 ff.

19. The election of Ministers to a Cabinet may not be incompatible with responsible government provided the Ministers are from the same "team" as forms the constituency for the election. This is the caucus system used by the Labour Parties in Australia and New Zealand. The members of the Parliamentary Labour Parties elect the Leader, Deputy Leader and, when in office, the persons to be recommended to the Queen's Representative as Ministers. The Leader allocates the portfolios. All positions can be "spilled" by a caucus vote. The election of Ministers sees much horse-trading between the several party factions. Difficulties do arise, however, when Ministers, sure of their own caucus support, stray from the path of collective responsibility. It is very hard for the First Minister to maintain discipline simply because he can not usually get rid of any Minister.

    If it can work within a Party, can it not work within an Assembly as a whole? There would be even greater difficulties in maintaining collective responsibility and the team approach. The removal of an individual Minister would be even more difficult. Three external dynamics which operate on the Australasian Labour Parties would be lacking in the Territorial Assembly: a vociferous and well organized Opposition; a firm Party policy laid down outside Parliament by the Party Conference and Central Executive to which all Ministers must adhere; the possibility that a First Minister, faced with a rebellious Minister he dare not challenge in caucus, may nonetheless secure his expulsion from the Party (hence from the caucus) by the Central Executive. In short, it is the Party system that provides a framework in which the election of individual Ministers can co-exist, however awkwardly, with the tenets of responsible government. If it be objected that responsible government does not secure a collection of Ministers the majority of Members would have chosen, it may be riposted that neither the Australasian Labour caucus system nor the Territorial election system do either. Such striving for perfection of choice is fruitless.

20. The First Minister is, throughout the Commonwealth, the key figure in the Ministry. Lord Morley called him "the keystone of the Cabinet arch". The Cabinet is his creation. He can change its composition, bring it to an end by resignation, dissolution or by wholesale reconstruction. He decides when

it convenes, what it will discuss, how it will deliberate and reach a decision, and what it has decided. These are awesome powers. But they have not been evaded even in the new Commonwealth states in the Pacific. The apparently powerful position is always subject to Parliament's greater power, more effective when there is a vocal public opinion, to send the Prime Minister packing.

This is not a description of the present Territorial Ministry.

21. The Legislature's lack of confidence in the Ministry as a collective entity or in the principal Minister means that the usefulness to the Crown of all the Ministers is at an end. That is why all the modern Commonwealth constitutions ensure that all Ministers lose their posts, or hold them at the disposal of an incoming Prime Minister, whenever the Prime Minister, however he comes to hold the position, ceases to hold office.

This is not the position in the Northwest Territories where the censure of the Government Leader would not "bring the Government down". The other seven Ministers would continue to hold their places because elected to them by the Assembly. They may have their portfolios re-allocated after the vacancy on the Executive Council is filled and a new Government Leader chosen.

22. The circumstances which lead to the downfall of a Ministry almost always point out the principal man and his followers to succeed as a Ministry. If they do not, and another group of Ministers cannot be found, the safety valve of dissolution is available.

In the Territories, there is as yet no clear way to bring about the downfall of a Ministry. Even if there were, successors could not be marked out by circumstances; they would have to be chosen as individuals by election. Moreover, access to dissolution is not available against the wishes of the majority of the Assembly.

23. Votes, other than on specific motions of confidence, which are treated as matters of confidence are so because they amount to trials of strength between the Ministry and its supporters on the one hand, and other Members in the popular

House on the other. A Government must govern and so is given a fair degree of latitude in deciding when to resign and when to go to the people. Even so, a Ministry that ceases to be able to control the House on vital matters has lost its justification for holding office. Those vital matters will be clearly designated by one side of the argument or the other as trials of strength.

In the Territories, there is no reason why a Ministry would have any followers in the Assembly to give it a majority for any measure. The Ministry comes into existence, not because it, or rather its chief, has followers in the Assembly but because its individual Members commended themselves on an individual basis first to a geographical caucus and then to the Members as a whole. Because of the way Bills are handled in Committee even before presentation in the Assembly, it is hard to see a trial of strength arising on a Bill in the Assembly. One suspects procedural wrangles would be hashed out in the caucus of the whole Assembly. It is conceivable that a trial of strength there, lost by the Ministers, could lead to feelings that the Ministry had shot its bolt. But while the caucus serves as a place to settle in private what is to be done by the Assembly in public, no real question of confidence can arise, the Ministers simply accepting the caucus decision. The Address in Reply has been abolished. There remains only the Budget, supply, and rejection of particular estimates for the demonstrable purpose of indicating, in a trial of strength, want of confidence, as avenues for indicating to Ministers that their usefulness is at an end. There may be a natural hesitation to take this route, in which event only formal votes of non-confidence are left. Even the use of those may be restrained by a general feeling that matters should wait for settlement at the mid-term spill and election of Ministers.

24. A government must be capable of carrying the major elements of its legislative programme. Confidence requires more than the mere avoidance of censure or a non-confidence vote. If legislation is consistently mauled or defeated a Ministry has forfeited its right to office.

Yet in the Northwest Territories there need not be anything approaching a legislative programme. Bills may or may not survive the Committee hearings before introduction into the

Assembly. Once there they are virtually assured of approval in principle and are probably guaranteed against wrecking amendments. What would happen to a Government whose legislation was consistently rejected by the Legislative Committee?

25. Where parties operate, the issue of confidence is really settled by the electorate. Where they do not, or they are but loose groupings, confidence must be settled on the floor of the House. It is all the more important then that the avenues for doing this should not be artificially foreclosed in order to lend stability to what is in truth not a responsible Executive.

Where there are no parties, or no clear majority in the popular House, the selection of those who can carry the Queen's business must lie either with the Crown's Representative or with the House. Modern Commonwealth practice, specifically developed for jurisdictions where strong parties did not or might not exist, has committed the choice to the House by direct election of the Crown's principal adviser and servant.

26. Despite divisions in Cabinet, in the end there must be an acceptable decision which is put to the Legislature with the full weight of a Cabinet decision and supported by the Ministers and the Ministry's followers.

Sir Ivor Jennings thought that this implied and required some sort of party system,* and so it has proved even in the Pacific Commonwealth countries where parties did not once exist. The real question is: what sort of parties? For even if the Northwest Territories are to have responsible government and no traditional parties, the Ministry must have some followers, or be left to depend on the whim of the Assembly on every individual measure and vote.

27. Under responsible government, Parliament need not be a rubber stamp, as the revivification of the British House of Commons since 1970 shows.

What will make the Legislature a rubber stamp is where it exists only as a formal reason for the election of its members and as the place where decisions taken elsewhere are recorded. The growth of the party caucus system in Australia and New Zealand is one example of the tendency to the rubber stamp function. The dominant party Leadership in Canada is another. The tri-caucus system in the Northwest Territories may be another.

---

* Approach to Self-Government, p. 157

28. An Opposition is a usual feature of responsible government, as the focus in the House for the enforcement of accountability, and the rigorous conduct of scrutiny. Many modern Commonwealth Constitutions provide specifically for the post of Leader of the Opposition and by inference recognize the place of the Opposition. Technically, however, an Opposition is not necessary to the operation of responsible government, as is a Ministry with followers. An Opposition or small collection of opposition groups almost always forms in the House. Only in Kiribati with its responsible but popularly elected Presidency and in Tuvalu with its tiny population and House has this development not yet crystallised. Even in Tuvalu it is incipient, the "Leader" of the "Opposition group replacing the Prime Minister after the 1981 general election.

The role of an Opposition of some sort is really a most necessary one for the Opposition exercises the critical functions of Parliament. It also convinces the electors that there is an alternative Government-in-waiting. In this way responsible leadership by Government is matched by responsible criticism in Parliament. Despite the absence of an Opposition now in the Northwest Territories Assembly, one will form some day over some hot political issue, just as it did in Tuvalu under Dr. Puapua over the Lauti Government's investment of the foreign reserves and Church of Tuvalu funds through a California property developer. Once formed, an Opposition group is unlikely to dissolve. Human nature seems to like the team approach.

29. The alternative to responsible government in a parliamentary setting is the erection of some tribunal before which the Crown's advisers can be impeached. In a sense, this is precisely what the Northwest Territories Assembly has done. It has provided for the election of delegates to serve as the Crown's advisers after each general election, and for a biennial opportunity for impeachment before the Assembly-in-Caucus.

30. Responsible government means that there is separate and individual responsibility upon individual Ministers for errors, negligence, delinquencies and stupidity in the policies and administration of their several departments. This individual responsibility flows naturally from the principle that a Member, being also a servant of the Crown, must be able to answer in the House for every act of administration. The

proper way to enforce this responsibility is by criticism, and, if need be, censure which, if carried, probably requires resignation or dismissal. In modern practice, based on party government, a concerted attack on an individual Minister may lead to his resignation (or dismissal), a matter in the Prime Minister's hands and usually following clear evidence of political embarrassment to the Government, or to the Cabinet throwing the cloak of collective responsibility around the beseiged Minister and treating the attack on him as an attack on all. It is an inescapable aspect of collective responsibility that defective administration in a department becomes a Cabinet matter unless the responsible Minister is dismissed or cut adrift. When parties were weaker, Ministers were sacrificed more readily. Now-a-days the tendency is to defend them unless there is impropriety in a Minister's original action or in his reaction to trouble. It is hard to be precise. Apart from arguments over past precedents* the way in which individual responsibility is enforced depends to a large extent upon political circumstances and upon the personal and political relationship between an erring Minister and the Prime Minister. These make useful generalizations difficult because they straddle the border between constitutional law and politics.

Individual responsibility within collective responsibility would be very hard to apply in the Northwest Territories at present. The Government Leader is in no position to decide whether a Minister under attack should be sacrificed. Indeed such a Minister may not constitute a threat to the Ministry or to the other Ministers. Nor has the Government Leader the standing to require all the other Ministers to come to the defence of their beleagured colleague. The matter must be left to the censure of the Assembly. Similarly, where personal culpability or impropriety is involved there is no one who can require a Minister to seek permission to resign and to recommend that the resignation be accepted. If the Minister did not resign, it would become a matter for the passage of a motion of censure or withdrawal of pleasure from the Minister by the Assembly whose creature he really

---

* See Monograph for McGrath Committee, pp. 20-33, 81-90. The recent Tuna and Westland affairs have added to the precedents, but hardly to the clarity of any principle. What does seem obvious, though, is that decisions to sacrifice Ministers are rarely made as a matter of principle at the beginning of a contretemps. They are usually decisions forced on a Prime Minister by parliamentary and media outcry.

is. Consequently, the classic statement of Jennings cannot operate:

> "The Government does not accept responsibility for wrongdoing or personal mistakes by a Minister, or for matters which really amount to a breach of collective responsibility. The Government will sacrifice any Minister whose unpopularity, for whatever cause, is a threat to the collective survival of the Ministry, either in the House or before the electorate."*

If the Assembly is reluctant to censure or withdraw its pleasure from an individual Minister, preferring to wait for the biennial review (if held), then, since the Government Leader has no real authority over Ministers, they are in a very real sense "irresponsible" and unaccountable. Political, and hence democratic, control over the several departments of the Territorial administration is thereby severely diminished.

31. Parties are generally thought to be essential to responsible government and to be inherent in it. What do parties contribute to the constitution? They are the only effective means by which the electorate can bring its will to bear upon the Government or the Opposition. The continuity which a Party affords, and the steadiness it imposes on its parliamentary members in between elections, lends stability to government and protects responsible government from degeneration into politics after the manner of the French Fourth Republic. Party allows the Executive to govern in reasonable confidence of support in the House. Yet it is Party which also allows a sustained Opposition to be maintained and an alternative Government kept in being. Party allows that modern preoccupation of government - legislation - to be carried through. Only Party permits the very long Sessions and sittings of Parliaments of modern times to be endured without descent into squabbling and chaos. It is no accident that the rise of Party coincided with the extension of the electorate, and the growth of the legislative function of Parliament and of the number of sitting days per annum.

---

* Sir Ivor Jennings: Cabinet Government, Cambridge University Press, 3d Edn, 1969, page 497.

Political parties also afford the natural means, in a mass electorate, for promoting new ideas, defending existing ideas and educating public opinion. Writing before the advent of the mass electorate Burke defined a party as a "body of men united for promoting by their joint endeavours the national interest upon some particular principle upon which they are all agreed."* In practice, parties tend to be parliamentary institutions looking for public support for their work in Parliament. The party system is distinct from the caucus system. A party need not present itself as a body subject to outside direction. The party system has so many guises that it is difficult to discuss it briefly or as a creature with common characteristics. Yet one thing is obvious. As a matter of universal experience, some form of party politics seems to flow inevitably from the adoption of responsible government. Party is perhaps not central to responsible government or to its adoption, but it does become a feature of its working.

Many deplore the influence of parties, and of party politics, and want everyone to pull together, work for the common good and so on. Occasionally, in times of great crisis, party is put aside and non-party Governments are formed. But once the crisis has passed such governments have given way to the tendency to evade discussion and decision and to find weak compromises. The Government either peters out, as did Lloyd George's in 1922, or becomes absorbed into one party, as did the MacDonald - Baldwin coalition or Borden's Unionist Government.

The appeal of everyone working together tends to hide the fact that politics is about matters on which opinions can differ. The most ardent advocate of a non-party approach often assumes that his opinions are self-evidently correct and should be applied. The expression of other opinions is foreclosed. Political parties almost always ensure that divergent opinions are not suppressed. When all parties agree to support one opinion and suppress the expression of others, as in Ontario over separate school funding, the results are unhappy. Public opinion ceases to have an outlet.

---

* See Amery: op. cit., page 42

Parties in the modern sense really date from the time of Pitt the Younger. They hardened over the approach to be adopted to the French Revolution. Their hardening allowed the development of responsible government because it restricted the King's choice of Ministers so much. Even though the parties fissured and weakened between 1832 and 1867 they did not become mere "connexions" of prominent men. The political parties of Papua New Guinea today resemble the "connexions" of 18th Century Britain when each prominent politician had a group of supporters, never precisely defined and never very large. The Northwest Territories may not yet even have connexions, but in a sense there are two loose parties, an an Eastern Party and a Western Party, combined in a grand coalition to secure self-government and division of the Territories.* Self-government has been virtually achieved. Division seems to be delayed and its terms might in any event divide the coalition. If the result were really to be a Chamber of Independents the result would be chaos and self-government would be in jeopardy, because it is always open to Ottawa, under the present constitutional arrangements, to take back what it has conceded and to revert to Commissioner's rule.

At present in the Territories, the effective power of the Government does depend essentially on a majority in the Assembly, a majority really based on a coalition of interests and kept in reasonable harmony through trade-offs, deals and compromises struck outside the Chamber, in the caucus of the whole after negotiations between the Eastern and Western caucuses, and in committees. It is conceivable that in some circumstances voting against the Government in the Assembly, and against a deal that has been struck, may be a worse offence than voting against one's own Party in an ordinary Legislature.

A substitute for traditional party politics has been found but it has the appearance of being temporary. Its disintegration, following the achievement of self-government is likely. If the decision is taken to press on to responsible government and the operation of the principle of confidence, rather than delegation, the risk of party politics arising will probably have to be taken. An Assembly of true Independents will not work and can only lead to clandestine government outside the Assembly and outside the Ministry.

---

* Such grand coalitions were very useful in West Germany and Austria to ease the transition to democratic rule after the Second World War. The coalitions were quite long lived.

Responsible government is not necessarily easy to work with. It was hard to make it operable in the Australian colonies, in New Zealand, in some Canadian provinces and in the old Province of Canada. It clearly has its ups and downs in Papua New Guinea today. Yet it is much the same everywhere: the same pragmatic, tolerant muddle the British created for themselves at home. No one sat down and devised its characteristics, or prescribed the "grundnorms" of responsible government. Its principles simply came about from the practical development of a system which shares the Executive between one who has authority and power, but rarely exercises them, and those, being also Members of the Legislature, who exercise power and authority on behalf of that other, but have neither themselves. They are servants and are dispensible and dispensed with when the majority of the legislature loses confidence in them. The principles of responsible government are rules flowing from human nature, and not from political theory. That is why responsible government produces pretty much the same results wherever it is introduced. If those results are not desired, it would be better not to introduce the forms of responsible government at all.

VI. OPTIONS FACING THE ASSEMBLY

The identification of options for the executive government of the Territories and its relationship with the Assembly is necessarily based on an assessment of the present constitutional status of their government. I offer mine, fully aware that others may wholly disagree with it. It is likely that they appreciate the position better from close personal knowledge. To this outside observer the position appears as follows:-

1. The Territories are not fully self-governing. The "Commissioner in Council" enjoys more limited legislative power than does the Legislature of a Province. In particular, he can not legislate for the constitution of the Territories. The Commissioner is still under a statutory duty to administer the Government of the North-west Territories under Instructions from time to time of the Governor in Council and the Minister of Indian and Northern Affairs in Ottawa.

2. The fundamental future of the Territories has yet to be settled. Should it continue as a unit or be split into two jurisdictions on communal lines? Until this matter is resolved it is natural that self-government or provincial status be withheld and that Ottawa retain the right not only to legislate for the Territories but also to instruct the Commissioner in their administration.

3. Because of the rapid expansion of self-government within the context just described, a familiar stage of colonial government has been reached. Subject to Ottawa's right to require him to act otherwise, the Commissioner has become a constitutional ruler. His conduct of the administration of the Government is regulated by advice which he receives from elected Members of the Assembly serving as his advisers on the Executive Council, and not by Instructions received from Ottawa or by his own deliberate judgment. The methods adopted to appoint, and to remove, those advisers are not yet consonant with responsible government. The conditions which, under responsible government, force upon the Sovereign or Her Representative a set of advisers who are supported by a majority in the Assembly in preference to another set who would be supported only by a minority there, do not exist. In fact they have been studiously avoided.

4. There is as yet no separation of the formal advisory functions of the Executive Council from the Cabinet or Ministry. The Commissioner has just withdrawn from his last administrative functions and from active deliberation in the Executive Council, as it were as Chairman of a Board of Ministers.

5. A form of Ministerial government has been established, the Ministers all being Members of the Assembly. All departments of the Government are now in their hands.

6. While the Commissioner has withdrawn from a direct role in administration (unless ordered by Ottawa to resume it) and from chairmanship of the Board of Ministers, his late role as co-ordinator and initiator has yet to be assumed by anyone. There is government by departments. There is no first Minister. The Government Leader, because of his method of selection, has not the authority or standing of a first Minister to be the mainspring of the Government. A brilliant leader may overcome the present limitations and become one, but he would be an extraordinary man who could, from his handicapped position, assume a true primacy over seven other Ministers independently chosen from and by the Assembly's Members. There is at present a vacuum. Either the Government Leader will develop to fill it, or a collective leadership will do so.

7. The Ministry is not formed in a way consonant with responsible government by the selection of a first Minister able to command a majority in the Assembly and on whose recommendations the other Ministers are appointed.

8. The Ministry is not subject to the need to maintain on a continual basis the confidence of the Assembly. In no sense does the Ministry stand or fall as a unit. The Assembly is not yet operating in the way necessary to achieve responsible government. In a very real sense steps have been taken to ensure that matters of confidence do not arise in the Assembly: election of individual Ministers; election of the Government Leader by the Assembly Members only when the Ministers can not agree amongst themselves on a chairman; abolition of the Address in Reply; approval and amendment of draft Bills by an Assembly Committee before their introduction into the Assembly; Ministers' right to

abstain on votes, even on recommendations for changes in estimates; the institutionalisation of a periodic "spill" of Ministers' positions half way through the life of an Assembly. Ministers have the Assembly's confidence by election for two years.

9. Fundamental political matters, including but not restricted to the composition of the Ministry, are settled outside the Assembly, by the operation of a tri-partite caucus system: a caucus of the East; a caucus of the West; and a caucus of the whole. There is a grand coalition of the major political forces in the Territories, those based on the geographical split between East and West and those based on race. Because of the coalition approach, partly dictated by political considerations, including a desire to share spoils, and government moneys, and partly hallowed by traditions of consensual decision-making, the Assembly has not risen to the true parliamentary level under responsible government as the grand inquest of the Territories, the scourge of the Government and the final arbiter of its destinies. Equally, the people are not yet sovereign. They have no opportunity to make choices as to how they will be governed. One could be forgiven for thinking that they merely select individuals whom they trust to seek a "fair" share of the money.

10. The tri-partite caucus system operates as a continuing constitutional convention devising the rules under which the Territories will be governed, subject only to the need to gain Ottawa's approval where the position of the Commissioner is involved.

11. The provisions of Part II of the Legislative Assembly and Executive Council Act (""Executive Council" - Sections 54 - 64) are ultra vires the Northwest Territories Act (Canada) and, therefore, void.

12. The power of dissolution, essential to responsible government - and it must be remembered that responsible government developed in a context in which dissolution already existed - is unavailable to the Territorial Ministers. It is vested in the Governor in Council, and not the Commissioner. The statutory limitations on it are such that it can probably

> only be used where the Assembly (i.e. a majority of the Assembly) has requested that it be dissolved. In a Legislature without parties, or with vague or weak parties, an effective power of dissolution seems doubly necessary to cope with an unworkable chamber.

I conclude, therefore, that the form of government being practised in the Territories is either a transitional or interim one based on a grand coalition or an attempt to create a novel form of collectivised leadership by delegates accountable at intervals not to the Assembly and not to the people but to a private tri-patrite system of caucuses. If the latter is the form of government actually desired, questions of confidence in the traditional sense are irrelevant. The only question is whether or not the rest of the country, and the Government of Canada in particular, will permit full internal self-government or provincial status to be granted to a jurisdiction operating under a system of government so radically different from that obtaining anywhere else in the country.

On the basis that the present arrangements are interim or transitional, the following options present themselves.

A. DO NOTHING

This is always an attractive option, and for very good reasons. The status quo is familiar. If it were wildly unsatisfactory or unpopular it would not even be considered an option.

It must also be remembered that if "there is an underlying determination on the part of the politicians concerned to make it work ... almost any constitution may be made to work, whatever inherent defects it may possess".* The politicians of the North-west Territories may be determined to make the present constitutional arrangements work, and have good reason for so doing, because they may believe that they serve the body politic well, or themselves well, until the issues of division, full self-government or provincial status are decided. The prospect of being able to settle the rules of the game within a grand coalition through series of caucus discussions must be an attractive one to the political mind pending the achievement of the basic political objectives, whatever they may be.

---

* Lord Hailsham of St. Marylebone in the Forward to Sir John Kerr's: "Matters for Judgment", Macmillan, London, 1979

It is possible that those basic political objectives will prove incompatible; that the grand coalition will break down on some point of principle or on the rock of personal ambition; that Ottawa will refuse to deal with an atypical Government; or even that the people will become restless about the lack of choices offered to them at election time. On the happening of any of these events, or of any other scenario destructive of the underlying reasons for the present status quo, events will be apt to move quickly. Consequently, even those who favour preservation of the status quo may be interested in fall-back positions.

The very fact that the Assembly's Special Committee on Rules, Procedures and Privileges was asked to look into the application of the confidence convention in the Assembly indicates some predisposition to change the status quo, which is not surprising. The present situation is interim or transitional. It is inherently unstable and depends on complicated caucus management. The generality of mankind is conservative. They like to know where they stand.

B. TINKER

Perhaps the word "tinker" is perjorative, but what I have in mind is modification of the present system. It would still be interim or transitional in the sense that it would not accord with the responsible government model. But it would be closer to it.

1. Agree that Ministers must be Members of the Assembly.
2. Agree that the number of Ministers should not grow beyond eight. In an Assembly of only twenty-four a Ministry any larger in size will so dominate it as to make it virtually impossible to defeat any of its measures. If it grew any larger it would also amount to a de facto party of its own, just as the Board of Ministers in Ceylon became the United Party under the stimulus of full internal self-government.
3. Provide that Ministers must resign when the Assembly first meets after a general election and whenever so required by a vote of non-confidence carried by a majority in the Assembly. In this way the mid-term "spill" could be retained, if desired, and there could be other "spills". The idea of the Ministry as a collective entity would be introduced.

4. Provide for votes of censure on individual Ministers. A censured Minister would be expected to resign. His replacement would be chosen by the Assembly-in-caucus from nominees put up by his geographical caucus.

5. Call the Ministers as a collectivity "the Cabinet".

6. Adopt as a code a statement of a Minister's obligations under collective responsibility as follows:-

   a) Advice to the Commissioner must be unanimous, even if arrived at after the consideration of strongly held but opposed views.

   b) A Minister

      (i) must loyally support and defend all Cabinet decisions and not quaver by suggesting he compromised or was reluctantly persuaded;

      (ii) must be prepared not only to refrain from publicly criticising other Ministers and their actions but also to defend them publicly;

      (iii) must not announce a new policy or changes in policy without prior Cabinet consent - if he does so Cabinet may adopt the policy and save him from resignation, but if it does not, he must resign;

      (iv) must not express private views on Government policies, nor speak about or otherwise become involved in a colleague's portfolio without first consulting him and gaining his approval and probably that of the Government Leader;

      (v) must not make speeches or do acts which may appear to implicate the Government and must not express personal opinions about future policy except after consultation;

      (vi) must carry out the policy decided upon by Cabinet so far as it affects his own portfolio;

      (vii) must vote with the Government, whether it is in danger of defeat or not;

      (viii) must speak in defence of the Government and any of its policies if the Government Leader insists.

All the foregoing could be arranged as the present "rules" have been arrived at, though the caucus system. They would move the Ministerial system somewhat away from "government by department" and would introduce some of the collective elements of responsible government.

7. In order to enhance the position of the Government Leader, Ministers might be required to give him, once he is selected or elected under present arrangements, undated letters to the Commissioner seeking permission to resign. In this way he would have the effective authority to get rid of unsatisfactory and incompetent Ministers and those who simply cannot get on with their colleagues or breach the obligations of collective responsibility set out above. This authority would, by definition, be independent of a vote of censure in the Assembly or the mid-term "spill". It may also serve to enable the Government Leader to become the co-ordinating force in the Ministry and to push the Ministry towards the policy-formulation model and away from "government by department".

   There are two problems with this suggestion. First, it would have to be agreed that the Commissioner should act on the Government Leader's advice in accepting a Minister's resignation. This would probably entail securing fresh instructions from the Minister in Ottawa. Secondly, it amounts to a drastic change in present arrangements and gives the Government Leader, who is not freely chosen by the Assembly, the power to dispose of Ministers who are freely elected by it. The inherent conflicts in the present system of Ministerial selection, an inverted one when compared with the practices of responsible government, are clearly exposed.

8. The Government of Canada should be asked to take immediate steps to vest the power of dissolution in the Commissioner and to instruct him to exercise that power in accordance with the well understood principles governing the royal power of dissolution under the Canadian and British Constitutions. If the Government of Canada were to insist on retaining the power of dissolution, the present unworkable limitations on its exercise set out in Section 8 of the Northwest Territories Act should be deleted.

Once the idea of want of confidence is introduced as in 3 above, effective access to dissolution is imperative when the House consists of Independents, or at least vaguely recognized groups divided on geographical and communal lines. Otherwise, there could be an unworkable House and no remedy. The Assembly may vote to dismiss the Ministry but be unable to elect substitutes it will not also turf out.

9. The Government of Canada should be asked to update the nomenclature used in the Northwest Territories Act to reflect current Territorial usages, to provide for a Legislature consisting of the Commissioner and a Legislative Assembly and for an Executive Council to advise the Commissioner and consisting of persons appointed by him. If he has not already done so, he should be instructed to appoint to the Council those selected by the Assembly (under the rules already developed by the caucus).

The foregoing proposals, though designed only to sustain an interim solution, introduce the ideas of collective responsibility and a direct vote of non-confidence. They would still leave the Assembly with a weaker Executive than is usual under responsible government, still avoid matters of confidence on Bills and the Address, still leave in place the biennial "spill" and still produce an Assembly which, working through its system of caucuses, could make further constitutional adjustments as required and could do more than merely influence policy and legislation. The Assembly would, however, be less able to be a policy-making Legislature if the Executive were well led. It might be akin to the British House of Commons between the first and second Reform Bills. The continuation of the biennial review or "spill" would enhance its role as compared with, say, the Parliament of Papua New Guinea.

B1: A VARIANT OF OPTION B

If it were desired to enhance slightly more the position of the Government Leader, the Assembly-in-caucus might decide that it should elect the Government Leader from amongst the eight elected Ministers by exhaustive secret ballot. This would ensure that, as against the other seven Ministers, he was the choice of the Assembly as Leader.

C. RESPONSIBLE GOVERNMENT ON THE PRESENT CANADIAN PATTERN

I mention this merely to be complete. It stands at the other end of the spectrum from Options A and B. It would presuppose the end of the complex caucus system and coalition now in effect. It may be the end result of full self-government and provincial status for the whole of the Territories, or some part of them. If that comes about it will bring in its train, or require, parties. The principles for the operation of the system are well known, even if not universally well understood. The operation of the confidence conventions are examined in detail in the 1985 monograph for the McGrath Committee and summarised at pages 129 - 149.

I do not take it that there is much pre-disposition to move now to a southern Canadian model of party, political, responsible government.

D. LAYING THE FOUNDATIONS OF RESPONSIBLE GOVERNMENT ALONG LESS TRADITIONAL LINES

1. The Executive Council should be retained as a formal advisory body, not a deliberative body. It should tender formal advice agreed upon by the Territorial Cabinet to the formal repository of executive power, the Commissioner representing Her Majesty.

2. The Cabinet should be separate from the Executive Council. Once this separation is achieved, there is no reason why the Commissioner should not preside at meetings of the Council, although this is not the Canadian practice, which in this particular is at odds with Commonwealth practice.

3. The Commissioner should be instructed to exercise his powers on ministerial advice, except in identified situations, and to summon to the Council for duty Executive Councillors according to the same principles that will govern his choice of Ministers.

4. The Cabinet should have the general direction and management of the executive government and be collectively responsible therefor to the Legislative Assembly.

5. Only Members of the Assembly may be appointed as Ministers.

6. Immediately after return of writs from a general election, and at any other time the office of Chief Minister becomes vacant when the Assembly is in session or stands adjourned, the Members of the Assembly should meet to elect one of their number as the person to be recommended to the Commissioner for appointment as Chief Minister. There is a virtue in using traditional terminology. The title "Chief Minister" will mark a further development in the constitutional status of the Territories beyond the limited form of self-government associated with such titles as "Government Leader", "Leader of Government Business" and "Chief Elected Member".

7. The election of the Chief Minister might be held in the Assembly under the chairmanship of the Clerk (or the Commissioner, or the Chief Justice) along the lines of the procedure in Papua New Guinea (Members moving to different parts of the Chamber) or in accordance with a secret exhaustive ballot as in Tuvalu, the Solomon Islands and the Cook Islands. The latter procedure is more in keeping with the practices already used by the Territorial Assembly-in-caucus for the election of Ministers and should probably be preferred on that account. The important thing is to ensure that the procedures and rules be known and involve the Assembly Members having both a free choice and the responsibility for choosing someone able to command a significant measure of intiial support and able to put together a team capable of carrying government business in the Assembly.

   The Rules of the Assembly should be amended to provide for the election as the first business after a general election or whenever the position of Chief Minister needs to be filled.

8. The Commissioner should be instructed to appoint as Chief Minister the person recommended to him by the Assembly and to appoint as Ministers, and to the portfolios, the Members, up to a maximum of seven, recommended by the Chief Minister. The requirement of an even split in the Cabinet as between Eastern and Western Members could be preserved, if desired. Since these Ministers will no longer be elected by the Assembly, the Commissioner will need to be instructed to ensure the necessary geographical limitation on appointments. This Instruction could be withdrawn at any time the limitation is no longer required.

   The Commissioner should be instructed to accept resignations of Ministers, dismiss Ministers and re-allocate portfolios on the advice of the Chief Minister.

9. If it is not desired to reintroduce the Address-in-Reply to the Commissioner's Speech at the Opening of the Legislature, it could be provided in the Assembly Rules that the Chief Minister move a positive motion of confidence in the Ministry at the conclusion of the Speech or at a special meeting of the Assembly after the Ministry has been appointed. Either way there will be the initial test of confidence traditional in Westminster type Parliaments.

10. If the position of Chief Minister should become vacant while the Assembly is not in Session, the Rules should provide that the Assembly should be summoned to meet immediately to elect a person for recommendation for appointment as Chief Minister as in 6, 7 and 8 above.

    If the vacancy occurs while the Assembly is dissolved or before the writs have been returned after a general election, the Commissioner should be instructed to appoint, acting in his own deliberate judgment, as Chief Minister a Member of the most recent Assembly.

11. The Chief Minister should resign at the first meeting of the Assembly after the return of the writs from a general election. The Commissioner should be instructed to dismiss him if he fails to do so.

12. If an effective power of dissolution is not granted by amendment to the Northwest Territories Act, the Commissioner should be instructed to appoint, acting in his own deliberate judgment, a Member as Chief Minister when, within such period as the Commissioner in his own deliberate judgment considers reasonable, the Assembly fails to recommend someone to him for appointment as Chief Minister.

    If an effective power of dissolution is granted, the Commissioner should be instructed to act as above and that in addition he may dissolve the Assembly if the Chief Minister he appoints fails to be sustained by the Assembly.

13. The present practice of the Legislation Committee should be retained. It has many attractive features. And since defeat on legislation need rarely be treated as a demonstration of want of confidence, the present practice removes very few opportunities for tests of confidence. It will always be open to a Ministry to resign if its legislation is consistently rejected or mauled in the Legislation Committee. If Members of the Assembly consider that the rejection of, or amendments made by, the Legislation Committee demonstrate want of confidence it will be open to them to move a direct vote of non-confidence.

14. The concept of non-confidence should be introduced flowing from

a) the carrying of an express motion of non-confidence in or censure of the Government or the Chief Minister;
b) defeat on the general budgetary policy of the Government;
c) defeat on the annual Appropriation or other Supply Bill, but not on the deletion or reduction of a particular Estimate;
d) defeat on a positive vote of confidence moved by the Government; and
e) defeat on a vote on any matter which the Chief Minister has declared in the House or by notice in writing to the Speaker to be a matter of confidence.

In the event of a defeat on any of these five types of votes, the Chief Minister should resign and the Commissioner should be instructed to dismiss him if he does not.

If access to dissolution becomes available, the choice facing the defeated Chief Minister should be resignation or request for dissolution within three days. Since the Assembly is likely to continue as one made up of Independents or loose groupings, it should be generally agreed that the Commissioner may refuse a dissolution and should do so in the first three years of the Assembly's life if he believes a new Government can be formed in the Assembly. If the successor Chief Minister elected by the Assembly fails on the positive vote of confidence in his Ministry, then a dissolution should normally follow. As this Chief Minister will have been elected by the Assembly, and thus enjoyed confidence to that extent, there need be no question of re-commissioning the preceding Chief Minister so as to grant him the dissolution.

If the Assembly fails to elect a Member for recommendation to the Commissioner for election as Chief Minister, the Commissioner should be able to appoint and to dissolve as in paragraph 12 above.

15. On dismissal or resignation of the Chief Minister, all Ministers should lose their posts. But the Chief Minister and all Ministers should stay in office, as caretakers, until successors are appointed.

16. It will still be open to the Government to resign if it chooses to do so (or to seek a dissolution, if that avenue is available) after any defeat or series of defeats in the Assembly.

17. The votes on the matters referred to in 13 should be carried by a majority of Members present and voting. To make them depend on a vote of the majority of the Assembly's Members is to allow unstable government by abstention and to open up the whole issue of proxy voting.

18. The constructive vote of non-confidence as used in Papua New Guinea, which would require a motion of non-confidence to nominate a new Chief Minister, should be avoided. It effectively prevents any other vote in the House being a matter of confidence. And especially where the House can not be dissolved prematurely, it means that a Government unable to prosecute business properly can stagger on.

19. Motions of non-confidence in or censure of individual Ministers should be provided for in the Assembly's Rules. On passage of such a motion the Minister should be expected to apply to resign and, if he does not, to be dismissed. The Government may, of course, designate the vote on such a motion as one of confidence in the Government itself, in keeping with general principles of collective responsibility.

20. Acknowledge as a code of expected conduct the statement of Ministers' obligations under collective responsibility set out on pages 129 and 130.

The above scheme conforms to the following minimum conditions for responsible government:

1. It maintains the position of the Crown by maintaining the Queen's Representative as an officer possessing authority and power, but rarely exercising it, and providing for a Chief Minister who exercises power but does not possess it.

2. It makes the political Executive dependent on its maintaining the confidence of the Assembly. The Executive will be criticisable, defeatable, removable, and kept that way.

3. The right of Ministers to appeal to the electorate against an unmanageable Assembly will be restored.

4. The Ministry will be a true executive of a nature best conducive to the framing of policy, the co-ordination of departmental activities and policies, and the fostering of collective responsibility. It will have an acknowledged head capable of ensuring solidarity.

5. The individual responsibility of Ministers for their departmental administration to both Crown and Assembly will be preserved.

6. It will ensure that the Ministry has the confidence of the Assembly and secures from the Assembly the moneys needed to carry on government.

7. The Commissioner will concern himself only with the appointment of the Crown's principal servant, the Chief Minister. Given the unsettled nature the Assembly is likely to have,

he will in almost all cases be absolved from the need to make personal choices, and even when he must, the Chief Minister so chosen will speedily have to test the confidence of the Assembly. (The Chief Minister may, of course, enjoy the benefit of the Commissioner's advice on Cabinet appointments.)

8. The situations amounting to non-confidence requiring resignation (or permitting request for dissolution) are fairly precisely defined. On the other hand, the Government is still free to treat any vote as one of confidence and to choose to go, even if not actually defeated on a confidence vote, if it feels unable to carry on with effect and honour.

9. A substitute mechanism has been provided for the general constitutional requirement to call on the Leader of the Opposition (who doesn't exist) and then to consult and take soundings when a Chief Minister resigns. The House will decide.

10. The Commissioner will not be left without advisers.

11. In the absence of party politics, or at least rigid party politics, the Governments chosen will have to act as minority governments. They will be able to ignore defeats, unless critical, may choose to give up, may seek a dissolution. The Assembly may elect and sustain as Chief Minister a leader of a small group or a man who is leader of none.

12. The Chief Minister, once elected, will not need to resign, and to be re-elected, in order to reconstruct his Ministry.

13. It will still be possible to incorporate the biennial spill, if desired, by requiring the resignation of the Chief Minister two years after the return of the writs from the last general election. This added requirement does not, however, really seem desirable as it will detract considerably from the introduction of the concept of the potential withdrawal of confidence at any time which lies at the heart of responsible government.

    If some added stability is thought necessary, it might be achieved by agreeing that an express motion of non-confidence will not be moved within six months of the positive vote of confidence in the Chief Minister's Cabinet. This could be inserted in the Assembly's Rules.

THE FORM CHANGES SHOULD TAKE

One last matter needs to be addressed: the form changes should take. In what form should they be expressed?

I have already made it clear that the power of dissolution should be dealt with, along entirely traditional lines. This will require an amendment to the Northwest Territories Act. Amendments to that Act to accord with the nomenclature now used in the Territories are also desirable, but are not strictly necessary. They have been done without so far. Amendments to the Act to provide for an Executive Council would also be desirable, but, again, are not necessary. The Minister need only issue instructions to the Commissioner to appoint the members of such a Council on the advice of the principal Minister and to act in relation to the Council and the Ministers in accordance with the well understood principles of responsible government. Specific details could be added to give effect to Option D but might well be unnecessary.

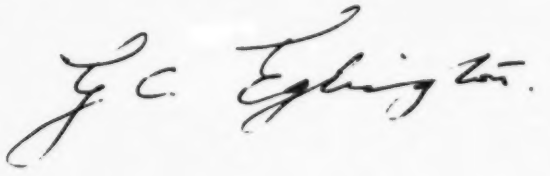
Given the unique opportunity the Territories have to develop their constitutional arrangements, as they have done, through the tri-partite caucus system, it will serve much better to continue in this approach. "Rules" can be developed and adopted as needed. The more they are kept out of the Assembly's Rules the better. There is, in any event, no power to enact them by Territorial Ordinance (Act) as the Northwest Territories Act now stands.

Consideration may be given, if Option B were adopted, to providing a procedure in the Assembly's Rules for motions of censure on Ministers and motions of non-confidence in or censure of the Ministry. It may be thought desirable to give such motions priority, to require certain notice, to limit time for debate and so on. I know little about parliamentary procedure and leave these matters to those who do.

Similarly, if Option D were adopted, the Assembly's Rules might well make specific provision for election of the person to be recommended to the Commissioner for appointment as Chief Minister, including, if desired a delay of some days between nomination and election; and for the procedures on motions of censure and non-confidence, identifying the circumstances in which they may be moved; the procedure on a positive vote of confidence in a new Ministry, on a vote on the general budgetary policy of the Government, and on a vote of censure of a Minister.

The additions to the Assembly's Rules should, however, be of a machinery nature only. They should not attempt to state the rules of the games, only the ways the enforcement of those rules will be facilitated.

When it comes time to write a complete Constitution for the Territories, or for its divided parts, that will be time enough to think about reducing constitutional conventions or local practices to writing, bearing in mind that there is probably now no legislative power in Canada which could make the written principles non-justiciable. In the meantime, advantage should be taken of a unique opportunity to emulate the development of the British Constitution itself, and to experiment and adapt within generally well recognized principles adopted by the Assembly-in-caucus. Those principles themselves can be adapted and modified as circumstances warrant, and by the same wholly traditional method of general agreement, consonant with consensual government and Westminster practice both.



APPENDIX I

MINISTER'S INSTRUCTION TO
THE COMMISSIONER OF THE NORTHWEST TERRITORIES
2 June 1986

"You recently sought my direction on the proposal that you should step down as Chairman of the Executive Council. This move is consistent with the evolution of more responsible government in the NWT and I concur that the time has come to give fuller recognition to the developing political maturity of the NWT Government. As a result, this letter is intended to confirm my direction to you that the Chairmanship of the Executive Committee should be assumed by the Government Leader. It follows, that your current departmental responsibility, such as for Personnel, may also be transferred to an Executive Committee Member."

APPENDIX II

NON-PARTY GOVERNMENT IN BRITISH COLUMBIA

"In British Columbia, in August, 1898, the Lieutenant-Governor, Mr. T.R. McInnes, dismissed Mr. J.H. Turner. There were no provincial parties. In the July general election, Mr. Turner's Government had won 17 of 38 seats, with returns from a remote two-member constituency, Cassiar, still to come in. The Opposition was united in nothing except dislike of the Government, and was unable even to agree on a leader.

A few days after the election, the Lieutenant-Governor told the Premier that he considered the election result "an expression of want of confidence on the part of the people". Unless he could become convinced that the Government had a majority in the new Assembly, he would refuse to accept the Premier's advice on new appointments, or expenditures not already provided for in the Estimates (except in cases of "urgent necessity"). The Premier admitted that he had lost his majority. He had tried, in vain, to come to an agreement with some members of the Opposition. McInnes said he did not want to take any decisive action till the returns from Cassiar were in, though he considered the result there could not "reverse the verdict of the electorate". For some weeks, the affairs of the province remained in a state of suspended animation. Then McInnes acted. He was "convinced" Turner could not command a majority in the Assembly. He was not willing to put the province to the delay and expense of a special session to prove it. He dismissed the Government.

Knowing that the Opposition factions could not agree on a leader, he sent for Mr. Robert Beaven, a former member, without any personal following. Beaven failed to form a Government. McInnes then sent for Mr. Charles Semlin, Leader of the Opposition in the previous Assembly. Semlin took office, with a Ministry of which he was scarcely more than the nominal head. By August, 1899, he and one of his strongest Ministers, Mr. Joseph Martin, were in open and violent disagreement, and Martin resigned. McInnes tried to get the Premier to meet the Assembly or to advise a dissolution, but on the advice of the Dominion Government, gave up this attempt. Instead, he harrassed the Government with incessant demands for explanations of this or that, questioned appropriations, refused to approve recommendations.

The Assembly met on January 4, 1900. For several weeks, one member likely to vote with the Opposition was absent, and the Government was, four times, sustained only by the Speaker's

casting vote. Then the absentee came back, and on February 23 the Government was twice defeated, 19-18, on its Redistribution Bill. Semlin asked for three days to consider whether to resign or to ask for a dissolution. He succeeded in reaching an agreement with three members of the late Turner Cabinet, in return for two seats in his Cabinet and some change in policy. He then informed McInnes that he could command a majority, but asked for a further delay. Instead, the Lieutenant-Governor dismissed him.

The Assembly, on February 27, expressed regret at the dismissal, and asserted that Semlin had had "efficient control" of the House. McInnes paid no attention. He sent for Joseph Martin. Martin took office March 1. He was the only Minister with a seat in the House, which promptly voted no confidence, 28-1. Martin asked for and got a dissolution, to take place when the new Voters' List would be completed.

He elected seven certain and six probable supporters, and headed the largest group. But he had no chance of a majority, so he resigned. Most of the members recognized no leader. So McInnes called on Mr. James Dunsmuir, a financial, coal and railway magnate, to form a Government, which he did. The Dominion Government dismissed McInnes, June 21, 1900, replacing him by Sir Henri Joly de Lotbinière.

In November, 1902, Dunsmuir gave place to Mr. E.G. Prior, one of his Ministers. On April 14, 1903, an Opposition motion asking for a dissolution at the end of the session was defeated only by the Speaker's casting vote. Then a Select Committee on the Government's railway policy reported that two Ministers had been in collusion with prominent railway interests and at odds with the rest of the Cabinet. On May 27, the Premier announced that he had asked for and received the resignations of the two erring Ministers, and that a third, Mr. W.W.B. McInnes (son of the former Lieutenant-Governor) had submitted his resignation, which had not yet been accepted. McInnes said he was resigning "to facilitate an appeal to the country on party lines" (the Prior Government had contained both Liberals and Conservatives). On the same day, the Government was defeated on the adjournment, 17-15, but sustained on two subsequent divisions, 17-15 and 16-15.

The Premier had already announced that the Lieutenant-Governor had promised him a dissolution as soon as Supply had been voted. After the defeat of May 27, he announced that he would ask for a

dissolution next day. But on May 28 the House refused Supply, by a vote of 19-16, and on May 29 it passed a motion that the report of a Committee which had investigated the Premier's conduct in regard to a certain contract be shown to the Lieutenant-Governor. Joly refused Prior's request for a dissolution, and on June 1 dismissed him because of his conduct in regard to the contract reported on by the Committee. He called on Mr. Richard McBride, who formed a purely Conservative Government, was at once sustained, 19-14, obtained Supply, and was granted a dissolution."

From a Manuscript by Dr. E.A. Forsey

Northwest Territories Legislative Assembly

ᖃᓄᐃᓕᖅᑐᑦ ᐊᓂᒍᓂᐅᔪᖅᑎᑦ

ᐊᑐᐊᒃᓯᒪᔨᓂᖅᓴᓐᓂᖏᑦ

ᑲᑎᒪᔨᖏᑦ

ᐱᖓᓱᐊᕐᓂᖅ ᐅᓂᒃᑯᖓᓂᒃ

ᑎᑭᓂ ᓴᖅᑭᓂ
ᐃᓕᓴᐅᔪᓂᒃᑯᓂ

ᐅᑉᓯᐸ 14, 1986

ᐊᒪᓂᔨᓪᓕ ᒥᓐ ᓄᑐᐱᓕᒧᑦ
ᒪᓕᒐᓕᐅᖏᓐᓄᑦ ᐅᖃᖏᑎᒃᓴᓂᑦ

ᐁᐃᑉ

ᑲᑎᒪᔨᖅᑭᓱᓕᐅᑲᒃᑐᑦ ᒪᓕᒐᓕᐅᖏᓐᓄᑦ ᑲᑎᒪᓐᐱᖅᓴᑦ ᒪᓕᒐᓕᐅᑎᓪᓗᐅᔪᓂᑦ ᐅᐱᓱᒪᑕ ᑐᓂᓯᔪᓐᓇᖏᓪᓗᒃ ᐱᖅᓯᔪᐊᓐᓂ ᐅᓂᖅᑲᓕᐊᑎᓂᒃ ᐊᓱᒪ ᐃᒃᓗᓯᓐᓂ ᑲᑎᒪᓐᐱᖅᓴᑦᑐᑎᑦᓯᓂᑦ ᑐᓂᓯᖏᓐᓂ.

ᑐᓂᓯᔪ.

ᑎᐊᑦ ᓴᓱᑦ, ᒪᓕᒐᓕᐅᖏᓐ
ᐃᖅᓯᐅᑦᑕᖅ,
ᑲᑎᒪᔨᖅᑭᓱᓕᐅᑲᒃᑐᓂᑦ
ᐊᑐᐊᓘᐃᑦ ᐱᓕᕆᓚᓂᑦ

ᐱᑎᑐᓂᖅ

ᑲᑎᒪᓕᕆᓂᖅᓯᒪᔪᑕᒃᑯᓐᓄᑦ ᐊᑐᖅᑕᐃᓐᓇᑦ ᐱᓕᕆᓂᑦᑎᐊᕐᓂᖅᓴᖅ 6-ᖑᓂᓗ ᑲᑎᒪᔨᓪᓗᑦ ᖃᓄᐃᓗᓐ ᑲᑎᒪᐃᓕᕐᓂᒃ. ᐱᑎᑐᓂᑎᑦᑎᐊᕐᓂᖅ ᖃᐅᔨᓴᓂᖅᐳᑎᓪᓗᑦ ᓄᓇᓕᖃᐅᔪᓐᓃᑦ, ᐊᑐᖅᑕᐃᓐᓇᑦ, ᐊᒻᒪᓗᑎᓄᓐᓂᓪᓗ ᐃᓕᓴᕐᓂᓐᓂᓪᓗ ᐊᑭᒪᓗ ᓴᓇᒪᓂᖓᓂᖅᓴᖅ ᐃᓕᓴᕐᓂᓐᓂᓪᓗ ᑲᑎᒪᓂᖅᓴᖅ ᐱᓕᕆᓂᑦᑎᐊᕐᓂᖅᓴᖅᑐᑦ ᐊᑐᖅᑕᐃᓐᓇᑦ ᐊᓯᔨᓕᐊᓕᓂᖅᓴᖅᓗ ᓇᓕᓂᐊᕐᓂᖅᓴᖅᑐᑦ ᐱᓕᕆᓂᑦᑎᐊᕐᓂᖅᓴᖅᑐᑦ ᐊᓯᔨᓕᐊᓕᓂᖅᓴᖅᑐᑦ ᓇᓕᓂᐊᕐᓂᖅᓴᖅᑐᑦ.

ᒪᓐᓇᓂᖓ ᐃᓱᓕᑎᒋᓇᓱᒪᓪᓗᑦ ᑕᑯ ᑲᑎᒪᓕᕆᓂᑦ ᖃᐅᔨᓴᖅᓯᒪᓕᓂᒃᑯᓐᓄᑦ ᐊᑐᖅᑕᓚᐅᐅᓕᕐᓂᖅᓴᖅ, ᑐᓂᓯᔪᓐᓇᖅᑐᓂᖅᓴᖅ ᑲᑎᒪᓂᖅᓴᖅ ᐃᓕᓴᕐᓂᓐᓂᓪᓗ ᐃᓕᓴᕐᓂᓐᓂᓪᓗ ᐊᑭᒪᓗ ᓇᓕᓂᐊᕐᓂᖅᓴᖅ ᑐᓂᓯᔪᓐᓇᖅᑐᓂᖅᓴᖅ ᐊᑐᖅᑕᐃᓐᓇᑦ ᐊᓯᔨᓕᐊᓕᓂᖅᓴᖅᑐᑦ ᑐᓂᓯᔪᓐᓇᖅᑐᓂᖅᓴᖅ ᐊᑐᖅᑕᐃᓐᓇᑦ ᐊᓯᔨᓕᐊᓕᓂᖅᓴᖅᑐᑦ ᐃᓕᓴᕐᓂᓐᓂᓪᓗ

ᑲᑎᒪᔨᑐᐃᓐᓇᐃᑦ ᑐᓂᓴᖅᑎᑦ

1. ᑐᓴᕈᑎᖅᑎᑦ ᑲᑎᒪᓂᕆᔨᖅᑎᓪᓗᑦ ᐅᖃᓕᒫᑕᐅᖃᕐᓂᑐᑦ ᑎᑎᕋᕐᑕᐅᖃᓐᓂᓗᓕᒫᑦ, ᐊᐃᒪᓗ

2. ᐅᖃᓕᒫᑕᐅᖃᕐᓂᑐᑦᑐᒃᓴᐅᓪᓗᓂ ᓄᓇᖃᖅᑐᑐᖃᐃᑦ ᐅᖃᐅᓂᖓᑎᑐᑦ ᖃᓪᓚᓇᑎᑦᓗ

ᑲᑎᒪᔨᖏᓪᓗᒍ ᐃᓚᒋᔭᐅᒍ ᐅᖃᖅᑎᖓᑦ ᑭᓱᓗᓂ ᐊᑐᕐᓂᖅᑐᑦᑐᒃᓴᐅᓪᓗᓂ ᑐᓴᕈᑎᖅᑎᑦ ᐊᓯᖏᓪᓗᑎᑦ ᐊᑕᐅᓯᒪᓂᖅ ᐊᓯᖏᓪᓗᑎᑦ ᐃᓚᒋᔭᐅᒍ ᐅᖃᐅᓂᖓᑎᑐᑦ. ᐊᐃᒪᓗ ᐅᖃᖅᑎᖓᑦ ᓇᒡᒐᔾᔨᖃᑎᖅᑐᓂᒃ. ᐃᓚᒋᔭᐅᒍ ᓇᒡᒐᔾᔨᖃᑎᖅᑐᓂᒃ ᐊᑕᐅᓯᒪᓂᖅ ᐅᖃᖅᑎᖓᑦ ᐊᑕᐅᓯᒪᓂᖅ ᐃᓚᖏᑦ

ᐊᑐᐊᓚᓗᐅᔪᓄᑦ ᐃᓕᓴᓗᑎᓴᖏᑦ ᐊᓂᓪᓚᖅᓴᖅ

1 ᖃᐅᔨᓴᖅᑕᐅᓂᖏᑦ ᓂᕆᓪᓂᕐᓗᑎ ᐅᖃᓕᓴᖅᑕᐅᑎᓪᓗᒥᑦ ᐱᕐᓂᖅᓱᑦ

ᐊᓂᓪᓚᖅᓴᖅ ᐊᐱᓚᔪᓂᖅ ᑲᑎᒪᔨᖏᓐᓂᑦ ᐱᓕᐊᖅᑎᑎᓄᑦᑎᑦ ᐊᑐᐊᓗᓂᐅᕐᖑᕐᓂᖅᓯᒪᖏᑦ ᓂᕆᓪᓂᕐᓗᑎ ᐱᕐᓂᖅᓱᐃᑦ ᐅᖃᓕᓴᖅᑕᐅᑎᓪᓗᒥᑦ. ᐊᑐᐊᓚᖅ ᐃᓚᐃᓂᖅᓯᒪᑦ 48 ᐃᑲᖅᓂᑦ ᓇᓂᓪᑕ ᐱᓕᐊᖅᑎᑎᑕᐅᓂᐯ (ᐃᓕᓴᖅ ᓂᕆᓪᓂᕐᓗᑎ ᐅᖃᓕᓴᖅᑕᐅᓂᐅᕐᖑᕐᓂᖅᓱᓗ) ᑲᔪᓯᑎᑕᐅᖏᓐᓂᒃᑯᑦ ᑲᑎᐃᐅᕐᖏᓐᓂᖅᓱᒥᓂᖅ. ᐃᓚᐃᓂᖅᓱᓂᖅᓱᓕᒫᑦᓂ ᓂᕆᓪᓂᕐᓗᑎ ᐅᖃᓕᓴᖅᑕᐅᑎᓪᓗᒥᓗ ᐱᓕᐊᖅᑎᑎᓂᖅᓱᓂᕆᔨᓂᖅ ᑲᓚᐱᐅᓂᓚᐅᖃᖅᓱᓐᓇᑎᑎᒍ ᓂᓪᓚ, ᐊᑐᓂᐊᖅᓱᓂᐊᖅᑐᓪᓗᒥ.

ᑲᑎᒪᔨᓴᖅᓂᖏᓐ ᐱᓕᐊᖅᑎᑎᓄᑦᑎᓂᐊᓚᔪᓂᖅ ᐃᓕᑦ.

ᐅᖃᖅᑎᖏᑦ ᐃᓚᐃᓂᐅᕐᖑᕐᓂᖅᓯᒪᓂᖅ ᐱᓕᐊᖅᑎᑎᓄᑦᑎᖃᖅᑎᑦᓯᓂᖅ ᐃᓕᑦ ᒪᓂᓪᓗᖅ ᐱᕐᓂᖅᓱᓕᐅᕐᓂ 37, 38(g) ᐊᓚᓗ 48-ᒥ.

2 ᐃᓕᓴᕐᓇᐃᖃᖅᑎᑎᓂᐊᓚᔪᓂᖅ ᐱᓕᐊᖅᑎᑎᓄᑦᑎᓂᐊᓚᔪᓂᖅᓱᓕᒫᑦ.

ᐊᓂᓪᓚᖅᓴᖅ ᐅᖃᓕᓴᖅ ᐃᓂᓪᓂ ᑲᓇᑕᐅᑦ ᐊᑎᓂᕐᑕᐅᓂᓕᒫᓂᖅᓱᓂ ᒪᓂᓪᓂᐅᖃᖅᑎᖏᓐᓂ ᐃᓕᓴᕐᓇᐃᖃᖅᑎᑎᓄᑦᑎᓂᐊᓚᔪᓂᖅᓱᓂᕆᔨᓂᖅ ᖃᐅᔨ ᐱᓕᐊᖅᑎᑎᓄᑦᑎᓂᐊᓚᔪᓂᖅᓱᓂᕐᓗᑎ ᑎᑎᕋᓚᐅ ᐃᓕᓴᕐᓇᐃᖃᖅᑎᑎᓄᑦᑎᓂᐊᓚᔪᓂᖅᓱᓂᕆᔨᓂᖅ ᐃᓕᑦ ᑕᒪᓐᓇᖅᑐᖅ ᐱᓕᐊᖅᑎᑎᓄᑦᑎᓂᐊᓚᔪᓂᖅᓱᓂᕆᔨᓂᖅ ᑕᑯᓗᒃᑐᖅ ᐱᓕᐊᖅᑎᑎᓄᑦᑎᓂᐊᓚᔪᓂᖅᓱᓂᕆᔨᓂᖅ. ᑲᑎᒪᔨᓴᖅᓂᖏᓐ ᐅᖃᓕᓴᖅᑕᐅᓂᐅᕐᖑᕐᓂᖅᓯᒪᖏᑦ ᐊᓂᓪᓚᖅᓴᖅ 37-ᒥ 48-ᓂᓗ ᐃᑲᖅᓂᓗ ᓄᐃᓕᒪᓐᓇᖃᖅᖢᓂᕐᓂᕐᓗᑎᑦ ᐱᕐᓂᖅᓱᓂᐊᖅᑐᓪᓗᒥ. ᒪᓂᓪᓗᖅ ᑕᐃᒪᓐᓇ ᐊᑐᓂᐊᖅᑐᓪᓗᒥᓂᖅ ᐸᓴᐊᓂᖅ 29(1)-ᒥᓗ ᐊᑐᐊᓗᓂᐅᕐᖑᕐᓂᖅᓱᓐᓂᖅ ᐃᓕᑦ ᑕᒪᐃᓐᓇᓂᒪᖅ ᐃᓛᓂᑎᑎᓄᑦ ᑕᑯᓗᒃᑐᖅᓄᓂ ᐸᓴᐊᓂ. ᐃᓂᒪᓕᖅᓴᖅᑕᐅᓂᖏᓐ ᑕᓪᓕᐊᓂ ᓇᓱᒃᓂᒥᑦ ᐅᖃᓕᓴᖅᑕᐅᓂᐅᕐᖑᕐᓂᖅᓯᒪᖏᑦ ᐃᓕᑦ ᑕᒪᐃᓐᓇᖅᑐᖅ ᐃᓛᓂᑎᑎᓄᑦ ᐃᓛᓐᓂᑎᑎᓄᑦ ᐊᑎᓂᕐᑕᐅᓂᓕᒫᓂᖅᓱᓂᕆᔨᓂᖅ ᐅᖃᓕᓴᖅᑕᐅᓂᐅᕐᖑᕐᓂᖅᓯᒪᖏᑦ ᐊᑐᐊᓗᓂᐅᕐᖑᕐᓂᖅᓱᓐᓂᖅ ᐃᓕᑦ ᑕᒪᐃᓐᓇᖅᑐᖅ ᐱᓕᐊᖅᑎᑎᓄᑦᑎᓂᐊᓚᔪᓂᖅᓱᓂᕆᔨ

ᐊᐦᒪᓗ ᐅᓇᖏᑦ ᓄᓪᑦ ᐊᑐᐊᒐᖏ 86(ᐱ)-ᖃᓪᓕᕐᓗᓂ:

86(ᐱ) ᐊᑐᓂ ᑕᐃᒪᖃᓗᓄᑦ ᑲᑎᒪᔨᓕᕆᑦ ᐱᖃᓕᓂᖅ ᒪᓂᓯᑎᐅᖅᑕᕐᕕᖃᓕᖅᓂᖅ ᑲᑎᒪᔨᖃᓇᓄᑦ ᖃᐅᔨᓇᓱᒋᐊᖅᑐᓂᖅ ᑲᑎᒪᓕᕐᕕᖃᓕᖅᓂᖅ. ᖃᖅᑐᑐᐃᓇᖅ ᐃᓕᑐᖅᑕᐅᔪᐊᕐᕕᖃᓕᖅᓂᑦ ᑲᑎᒪᔨᓕᕆᓂ ᐃᓇᖅᑐᖅᑎᑐᓕᕐᕕᖃᓕᖅᓂᖅ ᑲᑎᒪᓕᕐᓂᐊᕐᓗᑎᑦ.

4. ᑲᑎᒪᔨᓕᕆᑦ ᐊᐦᒪᓗ ᑭᓇᐅᔭᐃᓇᐃᑦ

ᐊᐅᓚᖑᖅᑎᑦ ᐅᖃᓕᕐᖃᖅ ᑕᒪᑐᐃᓂᖅ ᑲᑎᒪᔨᓕᕆᑦ ᑭᓇᐅᔭᐃᓇᓄᑦ ᒪᑐᐃᓇᐅᔭᐃᓇᐅᑎᖃᖅᑎᒋᑕ. ᒥᓕᐅᖅᓯᖓ ᐊᑐᓂ ᑲᑎᒪᔨᓕᕆᓄᑦ ᐃᓚᒋᔭᐅᔪᐊᕐᕕᖃᓕᖅᓂᖅᐸᓂᓕᕐᓂᐊᕐᓗᑎᑦ ᐊᐦᒪᓗ ᒥᓂᔅᓴᐅᑎᑦ ᑐᑭᓯᐊᓂᖅᐸᓂ. ᒥᓕᐅᔪᓂᖓ ᐱᒋᐊᕐᕕᒃᑐᖅᑕᐅᔪᐊᕐᕕᖃᓕᖅᓂᖅᐸᓂᖅᑐᑦ.

5. ᐃᓕᓴᖅ ᑕᐃᒪᖃᓗᓄᑦ ᑲᑎᒪᔨᓕᕆᓂᕐᕕᖏᓐᓄᑦᑎᐊᖅ ᒪᓕᒐᓱᐊᕐᓂᖅ ᐊᑐᐊᒐᖏᓐᓄᖅ ᑲᑎᒪᔨᖃᓇᓄᖅ ᐊᐅᓚᑦᑎᐊᖅ.

ᐊᖏᕐᕉᑎᖏᑐᖓᓕᒫᑦ ᒥᐃᒪᖅ ᑲᑎᒪᔨᓕᕆᓂᕐᕕᖏᓐᓂᕐᒧᑦ ᐃᑲᓴᐅᔪᓐᓇᖅᑐᓂᒃᑯᓕᒫᑦ ᑐᓴᕐᕕᖏᓐᓂᖅᑐᑦ, ᓇᓗᓇᐃᔭᐃᔭᐅᓂᖅᑐᑦ ᓴᓇᔨᓴᖅᑎᑦᑎᓂᖅᑐᑦ ᒪᓂᓯᑎᐅᖅᑕᕐᕕᖏᓐᓂᖅᑐᑦ ᑭᓇᐅᔭᐃᓇᓄᑦ ᑲᑎᒪᔨᓕᕆᓂᕐᕕᖏᓐᓂᖅᑐᑦ ᑕᐃᒪᖃᓗᓄᑦ ᐊᐅᓚᑦᑎᐊᖅᑐᑦ ᑲᑎᒪᔨᖃᓇᓄᑦ ᐊᐅᓚᑦᑎᐊᖅᑐᑦ ᐊᐦᒪᓗ ᑲᑎᒪᔨᓕᕆᓂᕐᕕᖏᓐᓂᖅᑐ

ᐃᓗᐊᓕᕆᔨᑎᒃᓴᓂᖅ

ᑲᑎᒪᔨᖅᑎᑦ ᒪᓕᒐᕆᓕᖅᖢᖅ ᑎᓪᓗᒍᓕᒫᖅᓯᒪᔪᖅ, "ᑭᐅᕐᓂᖓᓕᒫᖅᓴᓂᖓᓂᒃ ᐊᐅᓚᕐᓇᑦ ᑲᑎᒪᔨᖅᑐᑦ ᒪᓕᒐᕆᓕᖅᖢᖅᓂᑦ, ᑲᑎᒪᔨᖅᑎᑦ ᐊᐱᖓᓂᖓᓴᓕᒫᑦ ᒪᓂᕐᓂᖅ ᐱᖁᓕᐅᔪᖅ. ᓄᓇᓕᖅ ᒪᓕᒐᒪ ᐊᐱᖓᓱᐊᕐᔪᖅᑐᑦ **Senator Eugene Forsey**-ᒧᑦ, ᑲᕐᓚᑎᓂᓪᓂᑦ ᑐᓴᐅᓂᓗᐅᔪᓂᒃ ᖃᐅᔨᓴᐅᖃᖅᑐᓕᖅᑐᑦ. 1984-ᒥ ᒪᓕᒐᒪ ᐊᖏᓗ **Professor Graham Eglington** ᐅᓂᖅᑕᐅᔪᖅᑐᑦ ᑲᕐᓚᑎᑐᖃᖓᓂᖅ ᑲᑎᒪᔨᖅᑎᓯᒪᐅᑕᖃᖓᓕᒫᑎᓂᒃ ᐊᑭᑭᐊᕐᑎᓂᒃ ᖃᐅᔨᓴᖃᖅᐅᓂᐊᕐᓂᖅᓴᓂᒃ ᑲᓇᑕᑦ ᑲᑎᒪᐃᓐᓇᐊᕐᓂᖅ. ᑲᑎᒪᔨᖅᑎᑦ ᖃᐅᔨᓴᓐᓂᒡᓗᖅᑐᑦ ᓇᓗᓇᐃᖅᑲᓐᓂᖅ ᓄᓇᓕᖅᑐᒥ ᓇᓗᓇᖃᖅᑎᑦᑕᕐᓂᖅᓴᓂᒃ, ᐊᐃᓐᓇᕐᓂᖅᓴᓂᒃ ᐊᐅᓚᑦᑎᓂᒃ ᑲᕐᓚᑎᑐᖃᖅᑎᑦᑕᕐᓂᖅ ᐊᐅᓚᖃᖅᐳᑦᑎᐊᕐᓂᖅ ᐃᓗᓐᓂᑦᑎᐊᕐᓂᖅᓴᓂᒃ ᑲᕐᓚᑎᖃᖅᑐᑦᑎᐊᕐᓂᖅᓴᓂᒃ ᑕᐃᒪᐃᓐᓇᖅᑐᓂᒃ ᑭᓇᐅᔭᓕᖅᑐᑦ ᐃᓗᓐᓂᑦᑎᐊᕐᓂᖅᓴᓂᒃ ᑲᕐᓚᑎᖃᖅᑐᑦᑎᐊᕐᓂᖅ ᐊᐅᓚᖃᖅᐳᑦᑎᐊᕐᓂᖅ.

ᐊᐅᓚᓐᓇᕐᓂᒃ **Professor Eglington** ᐅᖃᐅᔨᓴᖅᑐᖅ "ᖃᓄᐃ ᑲᕐᓚᑎᒥ ᐃᓗᓐᓂᑦᑎᐊᕐᓂᖅᓴᓂᒃ ᑕᒪᓐ ᒪᓕᒐᕆᓕᖅᖢᖅᓂᑦ ᑲᑎᒪᔨᖅᑎᑦ ᑕᐃᒪᐃᓐᓇᖅᑐᓂ. ᑭᓪᓗ ᒪᓂᕐᓂᖅ ᐊᐱᖓᓂᖅ ᐃᓗᓐᓂᑦᑎᐊᕐᓂᖅ ᐅᓂᖅᑕᐅᔪᖅᑐᑦ ᐃᓚᖃᖅᑐᑦ. ᐅᖃᐅᔨᓴᖅᑐᖅ ᐃᓗᓐᓂᑦᑎᐊᕐᓂᖅᓴᓂᒃ ᐃᓚᖃᖅᑐᑦ

ᒪᓂᓇ ᑎᑎᕋᐅᓪᓗᒃ ᐊᑐᐊᖅᑐᑦ ᓇᓗᓇᐃᔨᖏᓪᓗᑎᒃᑐᑦᓯᒪᓕᖅ ᖃᓄᐃᓕᖅ ᑐᓴᕐᕕᐊᓂᖅ ᐊᑐᐊᖅᑐᑦᓯᓂᖅ ᑭᓇᐅᔭᖅ ᒥᓂᔅᓴᐃᓕᓴᐃᓂᖅ ᑭᓇᐅᔭᖅ ᑕᒪᓐᓇᖅᑐᑦ ᑕᒪᒃᑯᓂᖅ ᐊᑐᐊᖅᑐᑦᓯᓂᖅ.

3. ᑲᑎᒪᔨᓕᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᐊᑐᐊᓘᓐ 55(1) ᒪᓕᒐᓕᐅᕆᓂᖅ ᐊᑎᓕᖅᑐᖅᓴᓕᒃ ᒪᓕᒐᓂᖅ ᐊᓯᔨᕐᑕᐅᔪᓐᓇᖅᑐᒥ ᓇᓗᓇᐃᔨᐃᓕᑎᑎᖃᕐᓂᖅ ᑭᓇᐅᔭᖅ ᒪᓕᒃ ᒪᓕᒐᓕᐅᕆᓂᐅᔪᓂᒃ ᑭᓱᓕᖅ ᑲᑎᒪᓂᖅ ᒥᓂᔅᓴᐃᓕᓴᐅᑎᓪᓗᒍ ᒥᓂᔅᓴᐃᓕᓴᐅᓂᖅᓱᓕᒫᓂᖅ.

ᑕᐃᒪᐃᓐᓂᖅᓱᒃ ᑕᓪᓕ ᑲᑎᒪᔨᓕᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᓕᒫᒃ ᑎᑎᕋᐅᓪᓗᒃ ᐊᑐᐊᓘᓐ 55(1)-ᒥ ᐊᑎᓕᖅᑐᖅᓴᓕᒫᒃ ᐃᒪᓐᖏᑦ.

ᐅᖃᐅᓯᖅᓱᒃ ᐊᓂᔑᓇᓯᖅ ᐃᓐᓇᐃᖅᑐᓂᖅᓱᒃ ᒪᓕᒐᓕᐅᕆᓂᖅ ᑲᑎᒪᔨᓕᒃ ᓂᕈᐊᖅᓯᒪᓂᖅ-ᓕᕆᓂᖅ.

Professor Eglington ᐅᖃᐅᓯᖅᓯᒪᓕᒃ ᐊᒥᓱᓂᖅ ᐱᓴᓇᓐᓂᖅ ᐃᓕᓐᓂᐊᕐᓇᖅᑐᓂᖅᓱᒃ ᒪᓕᒐᓕᐅᕆᓂᖅ ᓄᓇᕗᑦᑐᐃᓐᓂᖅ ᐱᔭᕇᓂᖅᓱᒃ ᓄᓇᓕᖅᑐᖅᓴᓕᒫᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᒪᓕᒐᓂᖅ (ᑲᓇᑕᒃ ᑲᑎᒪᔨᓴᕐᓂᖅᓱᒃ ᑭᓱᓕᖅ ᐊᑎᓕᖅᑐᖅᓴᓕᒫᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ), ᓂᓪᓚᕆᐅᓂᖅ ᖃᐅᔨᓴᖅᑕᐅᔪᓂᒃ ᑲᑎᒪᔨᓕᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᐊᑐᐊᖅᑐᑦᓯᓂᖅᓱᒃᓴᓕᒫᓂᖅ, ᑕᒪᓐᓇᖅᑐᒥ, ᑕᒪᓐᓇᖅᑐᒥ ᐊᑐᐊᖅᑐᑦᓯᓂᖅ.

4. ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᐊᑎᓕᖅᑐᖅᓴᓕᒃ ᑲᑎᒪᔨᓕᒃ ᐃᓚᖅᑎᑦᓯᓂᖅ ᑲᑎᒪᔨᓕᒃ ᐊᑎᓕᖅᑐᖅᓴᓕᒫᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᖃᓄᐃᓕᖅ ᐊᑐᐊᖅᑐᑦᓯᓂᖅ ᐊᑎᓕᖅᑐᖅᓴᓕᒫᒃ ᓂᕈᐊᖅᓯᒪᓂᖅ 55-ᒥᑦ 64-ᒧᑦ ᑎᑎᕋᐅᓪᓗᒃ ᐊᑐᐊᓘᓐ, ᐊᑎᓕᖅᑐᖅᓴᓕᒫᒃ ᑲᑎᒪᔨᓕᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᐃᓚᖅᑎᑦᓯᓂᖅ, ᑕᒪᓐᓇᖅᑐᒥ ᐅᓂᒃᑳᓕᐅᕐᓂᖅᓱᒃᓴᓕᒫᓂᖅ ᑲᑎᒪᔨᓕᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᑭᓱᓕᖅ ᑲᑎᒪᔨᓕᒃ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ.

5. ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᒪᓕᒐᓕᐅᕆᓂᖅ ᑲᑎᒪᔨᓕᒃ ᐊᑐᐊᓘᓐ ᐃᓚᖅᑎᑦᓯᓂᖅ ᑲᓇᑕᒃ ᑲᑎᒪᔨᓕᒃ ᐊᑎᓕᖅᑐᖅᓴᓕᒫᒃ ᓂᕈᐊᖅᓯᒪᓂᖅ ᐱᓕᕆᔨᑎᑎᖃᕐᓂᖅ ᐊᑐᐊᖅᑐᑦᓯᓂᖅ ᒪᓕᒐᓂᖅ ᑭᓱᓕᖅ ᐊᑎᓕᖅᑐᖅᓴᓕᒫᒃ ᓂᕈᐊᖅᓯᒪᓂᖅ ᒪᓕᒐᓕᐅᕆᓂᖅ ᐊᑐᐊᖅᑐᑦᓯᓂᖅ ᐃᓕᓐᓂᐊᕐᓇᖅᑐᓂᖅᓱᒃᓴᓕᒫᓂᖅ ᐊᑐᐊᖅᑐᑦᓯᓂᖅ ᐊᑎᓕᖅᑐᖅᓴᓕᒫᒃ ᓂᕈᐊᖅᓯᒪᓂᖅ ᐱᓕᕆᔨᑎᑎᖃᕐ

ᑲᑎᒪᓕᕆᓂ ᑲᑎᒪᓕᕆᓂᖅ ᐊᐱᖓᓱᒃᑐᐊᓕᕆᔨᖅᑕ ᑲᓇᑕᑦ ᑲᑎᒪᐃᓴᖅᓯᓐᓂᒃ ᐊᒻᒪᓗ ᑎᒥᑦᓯᓇᖅᑐᓂᒃᑯᑦ ᑲᑎᒪᓂᖅᓴᓂᒃᑯᑦ ᐊᑐᖅᑕᐅᓴᑦᑎᓪᓗᒍᓂᖅ ᐊᑐᖅᑕᐅᓴᑦᑎᓪᓗᒍᓂᖅ. ᑭᓱᑐᓂ ᖃᐅᔨᓴᓕᖅᑕ ᑕᐅᒪᖓᓂᒃ ᑭᓲᕐᓯᓇᖅᑐᖓ ᑲᑎᒪᓂᖅᓴᓂᒃᑯᑦ ᐃᓚᖓᑕᒥᒃ ᐃᓄᓐᓂᓴᐅᔪᖓᓂᒃ ᒥᓂᖅᑐᖓᓂᒃ. ᑲᑎᒪᓕᕆᓂᖅ, ᑕᕝ, ᐅᑯᓂᖓ ᐱᓕᕆᔨᖅᑎᑦᑎᓐᓂᖅᓯᒪᓂᖅ.

9. ᐱᓕᕆᔨᖅᑎᑦᑎᓐᓂᖅ ᐊᐅᓚᑦᑎᓂᒃ ᑲᑎᒪᓕᕆᓂᖅᓂᒃ ᑎᓪᓗᐊᑦᑎᓐᓂᖅ ᐊᑲᐅᙱᓐᓇᖅᑐᓂᖅ ᑲᓇᑕᑦ ᑲᑎᒪᐃᓴᖅᓯᓐᓂᒃ ᐃᓕᓴᐅᔪᓐᓇᖅᑐᓂᖅ ᒪᓕᒐᓱᐃᓐᓇᖅᑐᖓ ᐊᑐᖅᑕᐅᓴᑦᑎᓪᓗᒍᓂᖅ ᓄᓇᓕᖅᑐᓂᒃ ᐱᓕᕆᔨᖅᑎᑦᑎᓐᓂᖅᓯᒪᓂᖅ ᑲᑎᒪᓕᕆᓂᖅᓂᒃ ᐱᖓᓱᓂᖅᓴᓂᒃᑯᑦ ᐃᓄᐃᑦᑐᖅᑐᓂᒃ ᐊᑐᖅᑕᐅᓴᑦᑎᓪᓗᒍᓂᖅ ᐊᑐᖅᑕᐅᓴᑦᑎᓪᓗᒍᓂᖅ ᐊᑐᖅᑕᐅᓴᑦᑎᓪᓗᒍᓂᖅ ᑲᑎᒪᓂᖅᓴᓂᒃᑯᑦ ᐊᑐᖅᑕᐅᓴᑦᑎᓪᓗᒍᓂᖅ

ᑎᓕᐊᖅᑭᒃᑐᑎᑕᐅᓪᓗᒍᓐᓇᖅ ᒪᓕᒐᓕᐅᕐᓂᖅᑭᓄᑦ ᑲᑎᒪᑎᓕᓪᓚᑦ

ᒪᓐᓇᐅᑉ ᑲᑎᒪᔨᖏᓪᓕ ᐊᕐᓇᓕᓪᓕ ᖃᐅᔨᓴᕿᑎᕐᓂᖅᓱᖓᓂ ᒪᓂᓪ ᐊᒪᓕᓪᓚᑦ ᐊᑐᖅᑕᐅᓂᖅᓱᖓᓂ ᐊᑐᖅᑕᐅᓂᖅᓱᖓᓂ ᐊᒪᓕᓪᓚᑦ ᐊᑐᖅᑕᐅᓂᖅᓱᖓᓂ

ᑲᑎᒪᓕᐅᓂᑎᒃ ᐊᑐᖅᓯᓗᑎᒃᓴᖅᑎᑦᓯᖅᑎᑦ

ᑲᑎᓕᕆᓂᑦ ᖃᐅᓕᓴᖅᓯᒪᑕ ᒡᓗᐊᑦ ᑎᑎᕋᖅᓯᒪᓂᖅ ᑲᑎᒪᓕᐅᓂᑎᒃ ᐊᑐᖅᓯᓗᑎᒃᓴᖅᓯᒪᓂᖅᓯᓂᖅᓴᓂᑦ ᓚᓪᓚᓐᓇᕐᓂᐅᖅ ᑲᑎᒪᐃᖅᓴᓂᑦ ᓚᓪᓚᓴᖅᓂ ᑐᓴᕐᓴᓂᐅᕐᓂᐊᕐᓂᖅᓯᒪᑕ ᐱᐃᓴᓗᑎᒃ. ᐃᓱᒪᓚᓪᓚᓂᖅ ᐅᖃᓗᓐᓂᐊᕐᓂᖅᓴᐅᓂᖅᓴᐅᓕᑎᑕᐅᓴᓂᖅᓴᓂᑦ ᑲᑎᒪᓕᐅᓂᑦ ᑐᓴᕐᓴᐊᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅ. ᑭᐅᖃᓕᓂᖅᓴᐅᓂᑦ ᓂᓪᐸᐊᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᓚᓪᓚᓴᖅᓂᒃ ᐅᖃᓗᓐᓂᐊᕐᓂᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᑕᒪᓐᓇᐅᑉ ᑕᑯᓗᒃ ᐃᓚᖅᓴᓂᑦ ᐃᓱᒪᓖᓕᕐᓂᐅᖅ, ᐱᓪᓚᐊᓂᖅᓴᓂᑦ ᐱᓕᕆᓚᓪᓚᐅᑎᓪᓗᒍ ᑲᑎᒪᓕᐅᓂᑎᒃ ᐱᓕᕆᓂᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ.

ᑲᑎᒪᓕᓚᓂᓕᓂᖅ ᑲᑎᒪᓕᓂᑦ ᐊᑐᖅᓴᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅ ᐅᖃᓗᓐᓂᐊᕐᓂᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᐊᑐᐃᓚᓂᐊᕐᓂᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦᓯᖅᑎᑦ ᐊᑐᖅᓴᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᓚᓪᓚᓴᖅᓂᒃ ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦᓯᖅᑎᑦ ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦᓯᖅᑎᑦ ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦᓯᖅᑎᑦ ᐅᖃᓗᓐᓂᐊᕐᓂᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ.

ᑲᑎᒪᓕᕆᓂᑦ ᑐᓂᓴᐅᓕᕐᓂᖅ ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦᓯᖅᑎᑦ ᐊᑐᖅᓴᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ. ᑎᕐᓚᑎᑦᓂᖅ ᓂᓪᓕᓚᖅᓂᑦ ᐅᖃᓗᓐᓂᐊᕐᓂᖅᓴᐅ ᐃᓐᓇᐃᓕᓴᖅᓂᑉᓴᖅ ᐅᖃᓗᐅᑎᐊᓐᓂᑉᓴᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᖃᐅᖅᓴᖅᑎᑦ ᓚᓪᓚᓴᖅᓂᒃ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ. ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦ ᖃᐅᔨᓴᓕᕐᓂᐊᕐᓂᖅᓴᐅᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ. ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦ ᖃᐅᖅᓴᖅᑎᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ. ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦ ᖃᐅᖅᓴᖅᑎᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ. ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦ ᖃᐅᖅᓴᖅᑎᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ. ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦ ᖃᐅᖅᓴᖅᑎᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ.

ᑲᑎᒪᓕᕆᓂᑦ ᑐᓂᓴᐅᓕᕐᓂᖅ ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦᓯᖅᑎᑦ ᐊᑐᖅᓴᓂᖅᓴᐅᓕᓚᓪᓚᓂᖅᓴᓂᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ. ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦ ᖃᐅᖅᓴᖅᑎᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ. ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦ ᖃᐅᖅᓴᖅᑎᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ. ᑲᑎᒪᓕᐅᓂᑎᒃᓴᖅᑎᑦ ᖃᐅᖅᓴᖅᑎᑦ ᐊᑐᐃᓚᖅᓴᓂᖅᓴᐅ ᓚᓐᓇ ᐊᑐᖅᑕᐅᓕᓂᖅᓴᐅ ᐊᐅᓚᑦᓯᓂᑦ ᑲᑎᒪᓕᐅᓂᖅᓴᓂᑦ.

ᐱᓇᓱᐊᖏᓐᓄᐃᑦ ᑲᑎᒪᔨᖏᑦ ᖃᐅᔨᓴᖅᑭᑦᑐᓂ

ᑲᑎᒪᔨᕗᑦ ᖃᐅᔨᓴᖅᓯᓗᑎᒃ ᐊᒥᑎᓂᒃ ᒪᓕᒐᓕᐅᖅᑎᓂᒃ ᑲᓇᑕᑦ ᖃᐅᔨᓴᖅᓯᒪᑦ ᐊᑐᖅᓴᓱᒪᓕᕐᓂᖅᓂᒃ ᖃᐅᔨᓴᕿᑎᐸᓂᒃ ᑎᑭᒪᑎᑉᓂᑦ ᐱᓇᓱᐊᖏᓐᓄᐃᑦᓴᑦ ᑲᑎᒪᔨᖏᓐᓄᐃᑦ, ᑯᐊᐃᓕᓴᐅᓂᑦ, ᖃᐅᔨᓴᖅᑎᓂᓪᓗ ᐊᓂᖅᓂᓪᓗ. ᑲᑎᒪᔨᕗᑦ ᐃᓱᒪᓕᖅᑎᑦ ᑕᐃᒪᓐᓂᒃ ᐅᔾᔨᖅᓱᕿᑎᖃᖅᑎᓂᒃ ᐊᑐᓂᖃᖅᓯᓚᐅᖅᓯᓗᓂᒃ ᐊᒻᒪᓗ ᒥᓐᓄᐃᑦ ᒥᓐᓄᐃᑦ ᑕᐃᒪᓐᓂᒃ ᐊᑐᓂᖃᖅᓯᒪᔪᖅ ᑕᐃᒪᓐᓂᒃ ᖃᐅᔨᓴᖅᓯᒪᓂᖅ ᐱᓇᓱᐊᖏᓐᓄᐃᑦᓴᑦ ᐃᓱᒪᓕᖅᑎᑦ ᐃᓕᓴᕐᔪᐊᓘᓐᓃᑦ ᐱᓇᓱᐊᕆᔨᐅᔪᓂᒃ ᐃᓚᖏᑐ 35-ᓄᑦ ᑲᑎᒪᔨᖏᓐᓄᐃᑦᓴᑦ ᓄᓇᓕᖏᑦ ᖃᐅᔨᓴᖅᓯᒪᓂᖅ ᐊᑐᓂᖃᖅᓯᖏᓐᓄᑕᐅᓕᖅᑎᓂᒃ, ᒪᓄᓕᖓ ᐃᒥᐊᓗᓕᕆᔨᒪᔪᓂᒃ, ᖃᐅᔨᓪᓗ ᐃᓕᓴᕐᓂᐊᕆᔨᒪᔪᓂᒃ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ ᑲᑎᒪᔨᖏᓐᓄᐃᑦ.

ᑲᑎᒪᔨᕗᑦ ᐅᖃᓕᕐᓂᑦ, ᐅᑭᐅᓕᒫᓂᑦ ᐅᓂᖅᓴᓕᕆᔨᐅᓪᓚᑦ ᐊᒥᓱᓄᑦ ᐱᓇᓱᐊᖏᓐᓄᐃᑦᓴᑦ ᓴᖅᑭᑎᑕᐅᖅᑕᕐᒪᑦ ᒪᓕᒐᓕᐅᖅᑎᓂᒃ ᖃᐅᔨᓴᖅᑭᑎᒃ ᑲᑎᒪᔨᖏᓐᓄᐃᑦ, ᑲᑎᒪᔨᖅᑕᐅᖅᑕᕐᒪᑦ ᖃᐅᔨᓴᖅᑎᓂᒃ ᐊᑐᓂᖃᖅᓯᒪᓂᖅ ᐅᓂᖅᓴᓕᕆᔨᐅᓪᓚᑦ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ ᐃᓕᓴᕐᓂᐊᕆᔨᒪᔪᓂᒃ.

ᑲᑎᒪᔨᕗᑦ ᑕᕐᑭ ᑕᐃᒪᐃᓐᓂᖏᓐᓄᐃᑦ ᐱᓕᕆᓂᖅᑎᑐᓴᖅᑭᓐᓂᖅᓴᐅᓂᑦ:

ᑲᑎᒪᔨᕗᑦ ᖃᐅᔨᓴᖅᑭᑦᑐᓂᒃ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ ᑕᐃᒪᓐᓂᒃ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ ᐱᓇᓱᐊᖏᓐᓄᐃᑦ, ᑲᑎᒪᔨᖅᑕᐅᖅᑕᕐᒪᑦ ᖃᐅᔨᓴᖅᑎᖅᑕᐅᖅᑕᕐᒪᑦ ᐅᓂᖅᓴᓕᕆᔨᐅᓪᓚᑦ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ.

ᑲᑎᒪᔨᕗᑦ ᐅᖃᓕᕐᓂᑦ ᐃᓕᓴᕐᓂᐊᕆᔨᒪᔪᓂᒃ (ᑕᐃᓴᐅᓕᒃ **ABC**ᑦ ᓇᐃᓚᒋᑦᑐᓗᒍ) ᐅᑯᐊᖏᓐᓄᑦᑐᓂ:

ᐃ. ᑲᑎᒪᔨᕗᑦ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ ᐅᓂᖅᓴᓕᕆᔨᐅᓪᓚᑦ ᐱᓇᓱᐊᖏᓐᓄᐃᑦ ᐅᑭᐅᓕᒫᓂᑦ ᐅᓂᖅᓴᖏᓐᓂᒃ ᐸᓇᐅᓴᓕᓕᐅᖅᑎᓂᒃᓗ **ABC**ᑦ.

ᐱ. ᐱᓕᕆᓂᑕᐅᓴᐃᓕᓴᖅᑎᓂᒃ ᒪᓕᒐᓕᐅᖅᑎᓂᒃ ᑲᑎᒪᔨᖏᓐᓄᑦ ᑕᐃᓴᐅᓕᖅᓴᖏᓐᓄᑦ, ᑲᑎᒪᔨᖏᓐᓄᐃᑦᓗ ᖃᐅᔨᓴᖅᑎᓂᒃ ᐸᓇᐅᓴᓕᓕᐅᖅᑎᓂᒃ ᑲᑎᒪᔨᖏᓐᓄᐃᑦ **ABC**ᑦ.

ᑎ. ᖃᐅᔨᓴᖅᑕᐅᓴᖅᑭᑦᑐᓂᒃ **ABC**ᑦ ᐱᓴᓐᓂᓗᑕᐅᓕᖅᓯᓚᑦ ᖃᐅᔨᓪᓗ ᒥᓂᔅᓴᓐᓂᐊᓕᕆᓂᖅ ᑲᑎᒪᔨᖏᓐᓄᐃᑦ.

ᐳ. ᖃᐅᔨᓴᖅᑭᑦᑐᓴᖅᑭᑦᑐᓂᒃ **ABC**ᑦ ᑲᑎᒪᔨᖅᑕᐅᖅᑕᕐᒪᑦ ᑭᒡᓕᖅᓯᒪᔪᓂᒃ.

ᐸ. ᐱᓕᕆᓂᑕᐅᓴᐃᓕᓴᖅᑎᓂᒃ **ABC**ᑦ ᑲᓇᑕᒥᔪᓂᒃ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ ᓴᓇᔨᓴᖅᑭᑦᑐᓂᒃᓗ ᑲᑎᒪᔨᖏᓐᓄᐃᑦ.

ᑲᑎᒪᔨᕗᑦᓴᖅᑎᑐᓂᒃ ᐱᓕᕆᓂᑕᐅᓴᐃᓕᓴᖅᑭᑦᑐᓂᒃ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ: **ABC**ᑦ ᐅᓂᖅᓴᓕᕆᔨᐅᓪᓚᑦ ᓴᖅᑭᑎᑕᐅᖅᑕᕐᒪᑦ ᒪᓕᒐᓕᐅᖅᑎᓂᒃ ᑲᑎᒪᔨᖏᓐᓄᐃᑦ ᑲᑎᒪᔨᖅᑕᐅᖅᑕᕐᒪᑦ ᑲᑎᒪᔨᖏᓐᓄᐃᑦ ᐃᓕᓴᕐᓂᐊᕆᔨᒪᔪᓂᒃ ᑲᑎᒪᔨᖏᓐᓄᐃᑦᓴᑦ ᐱᓇᓱᐊᖏᓐᓄᐃᑦᓴᑦ ᑲᑎᒪᔨᖅᑕᐅᖅᑕᕐᒪᑦ ᖃᐅᔨᓴᖅᑎᓂᒃ.

ᖃᐅᔨᓴᕿᑎᐸᓂᒃ: ᑕᐃᒪᐃᓐᓂᖏᓐᓄᐃᑦ ᐱᓇᓱᐊᖏᓐᓄᐃᑦᓴᑦ ᑲᑎᒪᔨᖅᑕᐅᓂᖅᓴᓕᕆᔨᐅᓪᓚᑦ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ ᖃᐅᔨᓴᖅᑎᓂᒃ 84-ᒧᑦ:

84. ". . . ᐅᑯᓂᖓ ᐱᓕᕆᔨᖏᓐᓄᐃᑦ: ᒪᓕᒐᓕᐅᖅᑎᓂᒃ ᑲᑎᒪᔨᕗᑦ, ᐸᓇᐅᓴᓕᓕᐅᖅᑎᓂᒃᓗ, ᐸᓇᐅᔪᑐᐃᓐᓇᖅᑐᓂᒃ ᐸᓇᐅᓴᓕᓕᐅᖅᑎᓂᒃ ᑲᑎᒪᔨᕗᑦ; ᒪᓕᒐᓕᐅᖅᑎᓂᒃ ᐊᑐᓂᖃᖅᓯᒪᔪᓂᒃ; ᐱᓇᓱᐊᖏᓐᓄᐃᑦ, ᑲᑎᒪᔨᖅᑕᐅᖅᑕᕐᒪᑦ ᖃᐅᔨᓴᖅᑭᑎᒃ. . ."

ᐱᓕᕆᓇᐅᑎᖏᑦ

ᐱᓕᕆᓇᐅᑎᖏᑦ ᑭᒃᑯᓕᒃ ᐃᓕᓴᖅᑎᐅᔪᑎᑕᐅᓕᐅᑉᖁᓪᓚᑦ ᑲᑎᒪᔨᖏᓪᓗᒍ. ᑲᓇᐃᔾᔨᖏᑦ ᐊᑐᕐᓇᓱᖏᓪᓕ ᑐᓂᓴ ᑲᓇᑕᑦ ᑭᒧᖏᑕᐅᓕᓂᖏᑦ ᒪᓕᓂᐅᑎᖏᓪᓗᒍ ᖃᐅᔨᓴᖏᑕᐅᓕᖅᑐᓂ. ᔫᑭᒃᑲᓐᓂᕐᒥᓂᑦ ᑭᒃᑯᓕᒃ ᓇᓗᐃᓕᖅᑐᖏᑕᐅᓕᖅᑐᖏᓪᓗᒍ ᒪᓕᓂᐅᑎᖏᓪᓗᒍ ᐊᑐᕐᓇᓱᖏᓪᓗᒍ. ᑲᑎᒪᔨᖏᑦ ᑕᐃᓴᖅᓯᒪᓕᖅ ᓂᐅᔪᓐᓇᕐᓂᖅᑐᑦ ᑭᒡᓕᓗᒍ ᑭᓯᐅᖅᑕᐅᑦ ᐊᑐᕐᓇᖏᑦ ᑎᑎᖅᑕᐅᓕᖅᑐᖏᓪᓗᒍ ᐱᖓᓱᓇᓐᓂᒃᓴᓇᓕᖅᑐᓂᓪᓗᒍ ᑕᒪᓐᓇᐅᔪᓂᒃᑯᓗᒍ ᒪᓕᓂᐅᑎᖏᓪᓗᒍ. ᐊᑐᕐᓇᖏᑦ ᐅᓪᓗᒥ 31, ᐅᓂᒃᑲᓕᐅᔪᓐᓇᖅ ᔭᕆᐊᓄᑦᑐᓂᑦ ᐊᓐᓂᒪᓕᖅᑐᓂᑦ. ᐃᓕᓴᖅᑎᐅᑦ ᖃᓄᖅᑐᓂᑦᑕᐅᓕᖅᑐᖏᑦ, ᐅᑭᐅᓂᒃ ᑕᒪᐃᖏᓕᖅᑐᖅ ᐅᓂᒃᑲᓕᐅᔪᓐᓇᕐᓂᖅᑐᑦ ᑕᒪᓐᓇᐅᔪᓂᒃᑯᓗᒍ, ᐃᓕᓴᖅᑎᐅᑦ ᑕᒪᓐᓇᐅᔪᓂᒃᑯᓗᒍ ᐅᓂᒃᑲᓕᐅᔪᓐᓇᕐᓂᖅᑐ

ᑲᑎᒪᔨᐃᓐᓇᖅᑐᑦ ᐅᖃᐅᓯᕆᓕᐅᕐᓂᖅᓯᓂᖅ ᐊᑐᕐᑎᖃᖅᓯᒪᓂᖅ

ᑲᑎᒪᔨᕆᓪᓕ ᐃᓗᒪᓕᐅᕐᓴᑦ ᐱᑎᐊᖑᑎᑦᓯᕐᓂᐅᕐᖃᖅᑎᑦᑐᑦ ᑲᑎᒪᔨᐃᓐᓇᖅᑐᑦ ᐅᖃᐅᓯᕆᓕᐅᕐᓂᖅᓯᓂᖅ ᐊᑐᕐᑎᖃᖅᓯᒪᓂᖅᓯᓂᖅ ᑐᓴᕐᑎᖃᖅᖃᖅᑎᑦᓯᔪᓐᓇᔪ ᐊᒪᓗᓐ ᓂᕈᐊᕐᑕᐅᖃᖅᑎᑦᓯᔪᓐᓇᔪ ᐊᓯᖏᑎᒍᑦ ᐱᓕᕆᐊᖃᕐᓂᖅᓯᒪᓂᖅᓯᓂ. ᐊᑐᕐᖃᑎᒌᓕᐅᕐᓂᖅᓯᓂᖅ ᑕᒪᓐᓇᑦ, ᐅᖃᐅᓯᕆᓚᓕᓕᐅᕐᓂᑦ ᖃᓄᖅ ᑲᒪᒋᔭᐅᖃᖅᑎᑦᓯᔭᖏᑦᑐᒥᑦ ᐊᑐᕐᑕᐅᓕᐅᕐᓂᖅᓯᒪᓂᖅ ᑲᑎᒪᔨᐃᓐᓇᖅᑐᑦ ᐅᖃᐅᓯᕆᓕᐅᕐᓂᖅᓯᓂᖅ, ᐱᓗᐊᕐᓂᖅᑎᑦ ᐱᓯᕆᓕᐅᕐᓂᖅᓯᒪᓂᖅ ᐊᑐᕐᑎᖃᖅᓯᒪᓂᖅ ᐃᒥᓂᒃᓴᓂᖅᓯᓂᑦ. ᐊᑐᐊᓚᒃᓴᐊᖃᖅᓯᒪᓂᖅ ᐱᓯᕆᓕᐅᕐᓂᖅᓯᒪᓂᖅᓯᓂᑦ ᐃᓚᖓᑕᐅᕐᓂᖅᓯᒪᓂᖅ ᑲᑎᒪᔨᐃᓐᓇᖅᑐᑦ ᑲᑎᒪᔨᐃᓐᓇᖅᑐᑦ ᓄᓇᕗᒻᒥᐅᑦ ᐊᑐᕐᑎᖃᖅᓯᒪᓂᖅᓯᓂᑦ ᐅᖃᐅᓯᕆᓚᓕᓕᐅᕐᓂᖅᓯᒪᓂᖅᓯᓂᑦ ᐅᖃᐅᓯᕆᓕᐅᕐᓂᖅᓯᒪᓂᖅᓯᓂᑦ ᐅᖃᐅᓯᕆᓚᓕ

ᑐᓴᕐᓂᑦ ᑐᓂᖏᑎᖅᑕᑦᓂᖅ - ᑐᓴᕐᓂᓕᕆᓂᖅᓄᑦ ᒪᓕᒐᓕᐅᖏᑐᓂᖅᓄᑦ

ᑲᑎᒪᓕᕆᓚᑦ ᖃᐃᖅᓄᓕᒪᓕᐅᕐᓴᑦ ᐅᑭᐅᖓᑕᕐᒥᒃ ᑐᓴᕐᓂᓕᕆᓂᕕᐊᓂᖅ ᐅᖃᓕᓂᕐᒧᓄᓕᓂᑦ ᖃᓄᐃᑦ ᐃᓕᓴᖅᓯᒪᓂᖅ ᒪᓕᒐᓕᐅᖏᓐᓄᑦ ᑐᓴᕐᓂᓕᕆᓂᐅᖃᖅᑎᑦᓯᐊᓂᕐᒧᑐᓂᖅ. ᒡᓗᐊᑦ ᐊᑐᐊᓴᖃᖅᑎᓂᖅ ᐃᓕᑎᒍᑎᐅᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ ᑐᓴᕐᓂᓕᕆᓂᖅᑕ ᐊᑐᐊᖃᖅᑎᓂᓗ ᖃᓄᐃᓕᐅᕐᓴᖃᖅᑎᑦᓯᐊᓂᖅᓄᑦ. ᒪᓕᒐᓕᐅᖏᓐᓂ ᖃᐅᔨᓴᕐᓂᐊᕐᓯᒪᓂᖅᓄᑦ ᐅᖃᓕᓂᕐᒧᓄᓕᓂᑦ ᑐᓴᕐᓂᓕᕆᓂᖅᓄᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ ᐅᖃᓕᓂᕐᒧᓄᓕᓂᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ. ᐃᓕᓴᖅᓯᒪᓂᖅᓄᑦ ᑕᐃᒪᓐᓇᖅᑐᑦ ᐅᖃᓕᓂᕐᒧᓄᓕᓂᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ ᐅᖃᓕᓂᕐᒧᓄᓕᓂᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ. ᑲᑎᒪᓕᕆᓚᑦ ᐃᓕᓴᖅᓯᒪᓂᖅᓄᑦ ᒪᓕᒐᓕᐅᖏᓐᓄᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ. ᑐᓴᕐᓂᓕᕆᓂᖅᓄᑦ ᐅᑭᐅᖓᑕᕐᒥᒃ ᐅᖃᓕᓂᕐᒧᓄᓕᓂᑦ ᓯᓚᐅ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ ᖃᓄᐃᓕᐅᕐᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ, ᐱᓕᕆᓂᖓᓂᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ ᐅᖃᓕᓂᕐᒧᓄᓕᓂᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ. ᑲᑎᒪᓕᕆᓚᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ ᐃᓕᓴᖅᓯᒪᓂᖅᓄᑦ ᐊᑐᐊᓴᖃᖅᑎᑦᓯᐊᓂᕐᒧᑦ.

ᐊᑐᐊᖅᑎᑕᐅᓂᖓ

ᑭᖑᓂᖅᓯᐅᓄ ᐊᑐᐊᓴᓕᕆᓂᖓᓂᑦ ᐊᑐᐊᑲᓂᓂᓄᓴᒧᑦ ᑲᑎᒪᓕᕆᓂᖅᓄᑦ ᑕᒪᓐᓇᐅᑦ ᐊᑐᐊᓴᖅᑐᓂᕕᐅᕐᓴᒧᑦ, ᐱᓕᕆᓂᕕᑎᑕᕐᓂᒪᓕᕐᓂᑦ ᐊᓂᒪᓗ ᐊᒻᒪᓕᕆᑕᕐᓴᖅᑐᓂᑦ ᐊᑐᐊᖃᐃᑦ ᐊᑐᐊᖅᑎᑕᐅᓴᖅᑐᓂᒃᑯᑦ ᐱᓕᕆᔨᓄᑦ ᒪᓕᒐᓕᐅᖏᓐᓄᑦ ᒪᓕᒐᓕᐅᖏᓐᓄᑦᓱᓕᕐᓂᑦ.

ᐊᓂᖏᑦ ᑲᑎᒪᔨᑎᑎᐊᓕᓕᖏᑦ ᓂᓕ

ᑲᑎᒪᔨᖅᓯᒪᓂ ᐊᑐᐊᑏᐃᑦ, ᐱᔨᓐᓇᐅᑎᓂᓗ ᐊᓐᓄᑎᖅᑐᐅᓂᓗ ᐱᔨᔨᑎᓂᓗᓂᑦ ᖃᐅᔨᓴᕆᔨᒪᓕᒃ ᐊᓂᖏᓐᓇᓂᕐᒥᐅᓐ ᑲᑎᒪᔨᑎᑎᐊᖃᖅᑐᓂᕐᒥᓂᑕᑦᑐᓂᓗ ᑕᐃᒪᖏᓂᑦ ᑐᓴᖏᓂᑦ ᐅᓂᖅᑎᓂᐅᑉᓯᒪᓕᓂᓗ ᓴᓇ 1986-ᒥ ᑲᑎᓕᐅᖅᑎᓂᓕᑦ.

1. ᒪᓕᒐᓂᐅᖅᑎᖏᓐᓄᑦ ᑐᓂᓯᓕᐅᖅᓯᒪᓕᒃ ᒪᓕᒐᓂᐅᖅᑎᒍᑦ ᐱᑎᕐᐊᖅᑎᑕᐅᔪᓐᓇᐅᑉᐳᒃ ᓇᒪ 4-86(2)-ᒥᑦ ᐅᖃᖅᑎᖏᑦ ᐃᓕᓴᕐᕕᑕᕆᓂᖅᓱᓐᓂᒃ ᑲᑎᒪᔨᖅᑐᐅᓂᓗ ᑎᑎᕋᕐᓂᖅᓱᓐᓂᒃ ᑲᑎᒪᔨᑎᑎᐊᖃᖅᑐᓂᕐᒥᓂᑕᑦᑐᓂᓗ ᑲᑎᒪᔨᖅᑐᐅᓂᓗ ᑕᒪᓐᓇᖅᑐᑦ ᐃᓕᓴᕐᕕᑕᕆᓂᖅᓱᓐᓂᒃ ᑲᑎᒪᔨᑎᑎᐊᖃᖅᑐᓂᕐᒥᓂᑕᑦᑐᓂᓗ ᑲᑎᒪᔨᖅᑐᐅᓂᓗ ᐊᑐᐊᑏᐃᑦ ᐱᔨᔨᑎᓂᓗᓂᑦ ᐊᓂᖏᓐᓇᓂᕐᒥᐅᓐ

ᓴᓕᓐᓄᑦ ᐊᑐᓕᖅᑕᐅᓂᐊᖅ ᓂᖅ

ᑭᖑᔪᓕᖅᓯᒃᑲᓐ ᐃᓕ ᐊᑐᓕᖅᐸᐅᓯᒪᔪᖅ ᑲᑎᒪᔨᕐᕕᒃᓴᓂᖅ ᐊᑐᐊᓕᓕᑎᓂᖅ ᒪᓕ ᒥᒪᖅ ᐅᖃᐅᓯᑎᐅᓯᒪᔪᖅ ᐊᑐᐊᓕᐅᕕᖅᓱᐅᔪᓐᓇ ᐊᓯᔾᔨᕆᐊᑕᐅᔪᖅ ᑕᑯ ᕿᖓᑦ ᐱᖓᔪᐊᓘᓂᑦ ᐅᓂᒃ ᑲᓕᐅᕆᓯᒪᔪᓂᑦ ᓴᓕᑎᒍᑦ ᓂᐅᐸᐃᑦ 11-ᒥᖅᐅᔪᑦ ᓴᓕᓕᓕᐅᕆᐊᑎᑦ ᐱᒋᐊᕆᐊᒃᑲᑦ.